FRANCHISES

OF

ELECTRICAL CORPORATIONS

IN

GREATER NEW YORK

PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT

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N.Y. (State)

A Report Submitted to the Public Service Commission for the First District

BY

COMMISSIONER MILO R. MALTBIE

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Report on the Franchises of Electrical Corporations in Greater New York.

To the Public Service Commission for the First District:

In the course of the general investigation into the affairs of the electrical corporations operating within the First District — Greater New York — reports have already been submitted upon certain phases. The results obtained either by voluntary action upon the part of the companies or pursuant to orders of the Commission have proved beneficial not only to consumers and the public but in many instances to the companies themselves.

Following general service matters, an examination was made of the numerous franchises and franchise records of the companies. In many cases the latter were incomplete, and recourse was had to the documents upon file in city, county and state offices. The investigation was thoroughly and carefully made, but there are still several points which neither the companies nor the experts of the Franchise Bureau of the Commission have been able to clarify. It may be that if the uncertainty surrounding these matters were entirely removed, certain statements in this report would need modification, but it is believed to be as accurate as can be made from the records in the files of the Commission.

In order that the facts may be before the Commission and available for use in cases where franchise questions arise, this report is respectfully submitted. Copies of all of the principal documents and franchises referred to are on file in the Bureau of Franchises. The work of collecting and classifying these records has been done by Dr. Delos F. Wilcox, Chief of the Bureau, and his assistants. To Dr. Wilcox I am also indebted for the analysis of the franchises contained in this report.

Respectfully submitted,

MILO R. MALTBIE,
Commissioner.

December 28, 1910.

I.—General Remarks.

Passing of Competition. One of the most significant facts brought out by this investigation is the trend toward monopoly and the elimination of competition. Although there are nine electric companies actively operating within Greater New York, no person can obtain electric current from more than *one* company, except in a portion of Manhattan. If for any reason he is dissatisfied with this source of supply, he can not change unless he stops the use of electric current entirely or manufactures it. Even in that part of Manhattan (south of 136th street) where two companies have mains in certain streets and services to the same building, the competition is more apparent than real. Both companies are owned by the Consolidated Gas Company; they charge the same rates, offer the same inducements to use current, conduct their relations with consumers on the same basis, have the same rules and regulations, etc. Practically the only competition is in the kind of current supplied; one supplies direct current and the other alternating current. The duplication of mains and plant is avoided so far as possible, but each company insists that it will supply its service wherever requested. (See Exhibit IV.)

In the early years of the industry, the conditions were quite different. The theory that competition was desirable was generally accepted, approved by mayors of the city and urged by boards of aldermen. New companies were invited to compete with those then operating, and franchises were granted freely and liberally. By this means it was expected that prices for current would be reduced and service improved. Further, no system of public regulation was in existence and it was asserted that the board of aldermen had no power to limit prices, even in the franchises they granted. Of all the grants that were made, only two or three minor ones were exclusive and then only for a few years. The trend towards monopoly has progressed without the aid of exclusive grants.

In the Borough of Manhattan, twelve separate franchises have been issued, and thirteen other grants have been made which, under a recent decision of the Court of Appeals, turn out to have been illegal. All but one covered the entire borough together with the western portion of The Bronx. Indeed, one of the illegal

grants covered Manhattan and The Bronx entire. The twenty-five grants were issued to twenty-four different companies. At least five companies never exercised their franchises; several others did very little business; but at least nine operated on a considerable scale, and among five or six of the companies there was active competition for a time. In some instances, the control of new franchises passed almost at once into the hands of old companies; in others, the process was somewhat delayed, but at present there are only three that are not owned or controlled by the Consolidated Gas Company or its subsidiaries. One of these has never been used, all trace of a second has been lost and the third is independently controlled.

In other boroughs, the situation has been much simpler, largely because the field has not been so promising as to attract many competitors. Just prior to the creation of the Greater City, the various local authorities, particularly in Queens and Richmond, were very active and on January 1, 1898, there was scarcely an area for which a franchise had not been granted, but usually one company had franchises for several adjacent districts.

The net result of the last thirty years (1881 to 1911) is that the local authorities of twenty-eight different political subdivisions now consolidated in Greater New York granted at least ninety-two separate franchises. Of these, thirteen are clearly illegal, sixteen are not claimed by any company now operating within the City of New York, fifty-one are claimed to be either owned or controlled by the nine companies doing an active business and one by the Long Acre company, and eleven have expired or been superseded.

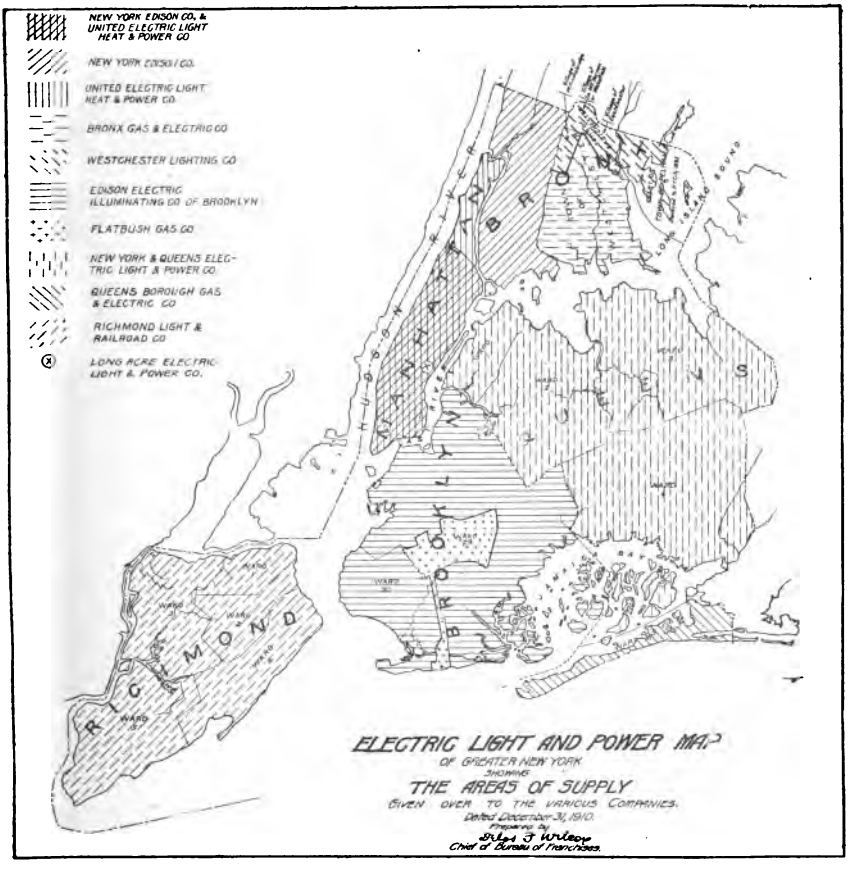
The competitive idea, so far as it found expression in the endeavor of one company to secure customers that might be served by another, was short lived. Although repeatedly tried, there was apparently no means at that time by which it could be kept alive. The advantages of combination from the standpoint of the companies were so great and the obstacles so few that competition was easily eliminated. There was no law to prevent combination and no approval had to be secured to the transfer of a grant. The multiplication of franchises or companies was futile under such circumstances.

The elimination of competition has been accompanied by a

gradual consolidation of companies operating in adjoining areas and a general apportionment of the city. A number of the early Manhattan companies operated in separate districts, but now only the portion north of 136th street is set aside for the exclusive operation of one company. In Queens and Richmond, several companies originally started small plants. The economic waste of production on a petty scale soon became apparent, however, and gradually one after another disappeared, usually being swallowed by the company which had been more successful. The present areas of supply are shown on the accompanying map, entitled "Electric Light and Power Map of Greater New York." It should not be inferred that the companies have lines in every street in these areas or that the rights to all of the territory assigned to each company are beyond question. It means rather that there are no companies except as indicated doing a general electric supply business in these areas.

Franchise by Acquiescence.— In the search for definite grants of authority to supply electricity and gas in certain areas where companies are now rendering service, there has been developed a new phrase, a new kind of franchise. The theory seems to be that a franchise does not need to be in writing or by formal resolution or evidenced in any special manner, but that a company may quietly begin operations without a franchise or extend its wires or pipes from an area where it has rights into an adjoining area where it has no legal authority, and that it may thereby obtain a franchise to supply service, if the local authorities do not forthwith stop such operations or extensions and continually police the area to prevent encroachment. If wires are once located without protest, rights are thus obtained for which no compensation needs to be paid, which are not subject to municipal control and which are perpetual.

This theory of franchise by acquiescence has been urged in the case of the Westchester Lighting Company, the New York and Queens Electric Light and Power Company and the Richmond Light and Railroad Company. These companies seem to set much store by the decision of the Appellate Division of the Supreme Court of the Second Department (Dec., 1903) in the case of *People ex rel. New York and Richmond Gas Company* v. *Cromwell,* 89 Appellate Division, 291. The facts in this case were briefly these:



The New York and Richmond Gas Company, as the successor of the Richmond County Gas Light Company, applied for a permit to open certain streets in the territory formerly occupied by the towns of Castleton, Northfield and Southfield, and upon being refused sought to enforce their claim by mandamus. The company showed that the Richmond County Gas Light Company had furnished gas in the territory since 1856, and alleged that the consents of the townships of Castleton, Northfield and Southfield had been secured immediately after the organization of the Richmond County Gas Light Company. The relator was, however, unable to produce the consents constituting its franchise rights, and was forced to rely upon the legal presumption that consent had been given, which arose from failure of the municipal authorities to object to the occupation of the streets by the company's mains. The Appellate Division upheld the contention of the company, pointing out that the statute granting permission to gas companies to lay mains simply required that the company obtain the consent of the "municipal authorities" before entering upon the enjoyment of its franchise. The court said by Judge Woodward:

"No method of manifesting this consent is pointed out, no definite body or bodies in the cities, villages or towns are pointed out, and the fair and reasonable inference is that any body which represents the community in a general sense, or in respect to the public rights, which are granted, is authorized to give this consent. * * * This result [a valid franchise] would, it seems to us under the authorities cited, follow even were it not possible to show any formal action on the part of the Highway Commissioners, for it is not suggested that the corporation did not construct its plant and distribute its gas in the several towns nearly a half century ago; and it appears that several of the villages which have since been created have taken gas under contracts with the relator and its predecessor. To say at this late day that the respondents may deny to the relator its rights under its franchise, upon any technical question growing out of the manner of the consent given so long ago, is to give precedence to unimportant forms above the substantial requirements of justice."

The court appears to have been impressed by the apparent injustice of forcing the company to prove that consents had been obtained at a time when it was a notorious fact that records of local authorities were most imperfectly kept and most informal. But this decision must be interpreted in the light of later litigation instituted by the Flatbush Gas Company in 1907 against

Mr. Bird S. Coler as president of the Borough of Brooklyn. The Flatbush Gas Company had obtained valid franchises for the entire town of Flatbush prior to the annexation of that territory to the city of Brooklyn. Subsequent to annexation the company sought to extend its electric mains along Ocean Parkway, a boulevard outside the territory in which it possessed a franchise. Accordingly it applied to the Commissioner of Parks, as the local authority having exclusive control of the avenue in question, and secured from him a contract for supplying street lights. On August 4, 1897, this contract was modified, permitting the Flatbush Gas Company to furnish electric current to such public or private consumers as might be desirous of using it. No further consent was obtained by the company and no application was made to the Common Council of the city of Brooklyn, to the Board of Aldermen of the City of New York, as its successor, or to the Board of Estimate and Apportionment of the City of New York, as the successor of the New York Board of Aldermen, the company relying entirely upon the presumption that the Commissioner of Parks had exclusive jurisdiction over the streets in question. The company was not interfered with down to 1907, at which time Borough President Coler refused to issue a permit for the opening of the street for the purpose of laying certain supply conduits, alleging that the company possessed no franchise in the area in question. Section 6 of the Transportation Corporations Law under which the company was operating was the successor of the old law of 1848, under which the New York and Richmond Gas Company had obtained its franchise rights. Its language was equally as broad, simply requiring the consent of municipal authorities before the franchise rights of the company were perfected.

Upon a motion for a peremptory writ of mandamus, Judge Crane, sitting at Special Term, granted the writ, largely upon the authority of the preceding case. He says (54 Misc. page 23):

"But if it be that the provisions of the charter above quoted from mean, as the Corporation Counsel claims, that the Park Department had full and exclusive control of the Ocean Parkway, subject to the powers of the Common Council, as in the case of Prospect Park, then as the Flatbush Gas Company entered upon the highway under the contract of 1898, laid its wires, and has furnished light to the city and others for the past ten years, it must be presumed that the Common Council of the City of Brooklyn, and the

other municipal authorities succeeding that body, have consented to such user, construction and operation. (*People ex rel. New York and Richmond Gas Company* v. *Cromwell*, 89 Appellate Division, 291.)"

Upon appeal to the Appellate Division the case was presented to a court, three of whose five members were Justices Woodward, Jenks and Hooker, who were a majority of the court which decided the Richmond case. The Flatbush Gas case was affirmed by this court without opinion. It is obvious, therefore, that the court considered the two cases similar and that in their opinion Judge Crane's decision was entirely correct. This case, however, unlike that of the New York and Richmond Gas Company, was carried to the Court of Appeals, reported in 190 New York, 268. The New York and Richmond Gas Company case was before the court not only through its quotation in the opinion of Judge Crane, but also as contained in the briefs of counsel. The Court of Appeals, however, decided that the company possessed no franchise on Ocean Parkway and must secure one from the proper local authority before being able lawfully to exercise rights in that street. No comment is made upon the Richmond Gas Company case, and absolutely nothing is said in the opinion of Judge Hiscock which would in any way indicate that the court gave any support to the doctrine of franchise by acquiescence.

It would appear that the Flatbush Gas Company case is essentially stronger than that of the New York and Richmond Gas Company. The Flatbush Gas Company was able to show an actual consent by an administrative officer in actual control of the street in which it sought to obtain rights; it was able to show further that in addition to having obtained this consent it had expended money and openly exercised rights in the highway in question with the tacit consent of the municipal authorities not only of the old city of Brooklyn, but of the City of New York; it was able to show that this user had continued for a substantial period, to wit, ten years. No question was made as to the good faith of the company in applying to the park department rather than to the common council.

It is clear, therefore, that "franchise by acquiescence" is not supported by any decision of the highest judicial tribunal in this state. Nevertheless, it is important that neither local nor state authorities should directly or indirectly recognize the rights

claimed by the companies which are founded upon "acquiescence" or unlawful appropriations. Further, it would be wise to notify the companies making such claims that their rights are not recognized and that they should proceed to obtain franchises in the regular, legal way. If they do not, proceedings should be instituted to settle their claims.

Franchise by Private Contract.—A second method of obtaining perpetual rights without obtaining a formal grant is even more ingenious. According to this theory, if a company were to produce and distribute current upon its own land, or were to make a contract with a real estate company for such purposes using only private property and never any street or highway which had been dedicated to the public, and if later public streets were laid out where the company had its mains and wires, such company would *ipso facto* come to have a franchise under the terms of the private contract as originally made even though the local authority within whose area these streets were located had not granted a franchise or any right whatsoever. Of course, if the supply company had a franchise for the entire local area within which the land was located, no harm would be done if streets were laid out after a franchise had been granted, for the franchise would apply to the new streets as soon as opened. But if the theory is correct, it is essential that attention should be given to contracts affecting streets about to be opened, for if electric light companies secure rights in that way, the charter provisions are set at naught.

Franchise by Annexation.— The fundamental question in this theory is: Does the franchise follow the flag? In other words, if a company has a franchise for "The City of New York," is that franchise extended to cover the annexed district by the mere process of annexation? For example, all of the valid franchises of the New York Edison Company were granted prior to the time when that portion of The Bronx east of the Bronx river was made a part of the City of New York. The company claims that the annexation of this area *ipso facto* gave the company the right to supply in that territory. No legislation nor court decisions were cited in support of this claim, and the company is not operating in the annexed district, which is supplied by the Bronx Gas and Electric Company and the Westchester Lighting Company. If this theory is good law, the United Electric Light and Power

Company and its subsidiaries, and possibly the Long Acre Electric Light and Power Company have rights to operate in The Bronx east of the Bronx river. An affirmative answer to the question would also extend the franchises granted by the former city of Brooklyn to the Edison Electric Illuminating Company of Brooklyn, the Kings County Electric Light and Power Company, and the State Electric Light and Power Company to cover not only the territory which was included in the city of Brooklyn at the time these grants were made, but also all the outlying districts that were later annexed to the city. It is even claimed by the Edison company of Brooklyn that the old Pope, Sewall & Company franchise of 1884, afterwards used by the Citizens Electric Illuminating Company, was extended automatically by the annexation of territory to the city to include all that portion of the present Borough of Brooklyn except Wards 13 to 19 as they existed at the time of the grant.

This question is of no interest in connection with the enlargement of the boundaries of the City of New York at the time of consolidation, January 1, 1898, for the reason that section 1538 of chapter 378 of the Laws of 1897 (Greater New York charter) provided specifically against the territorial expansion of existing franchise rights, as follows:

"Section 1538. This Act shall not extend the territorial operation of any rights, contracts or franchises heretofore granted or made by the corporation known as the Mayor, Aldermen and Commonalty of the City of New York, or by any of the municipal and public corporations which by this Act are united and consolidated therewith, including the counties of Kings and Richmond, and the same shall be restricted to the limits respectively to which they would have been confined if this Act had not been passed; nor shall this Act in any way validate or invalidate, or in any manner affect such grants, but they shall have the same legal validity, force, effect and operation, and no other or greater than if this Act had not been passed."

Conflicting Franchise Terms.— One of the most important results attending the corralling of many grants from various sources by a few companies is the difficulty of determining what provisions are actually operative. May the company select the franchise it desires to operate under? May it change from one to another according to its convenience? Must it maintain and operate the different portions of its mains and street equipment in accordance with the terms of the several franchises under which

the mains and equipment were originally constructed? What franchise is to apply to extensions built after consolidation or merger? In case of conflict, which is to predominate? These and many other questions, particularly as to the compensation to be paid, inevitably arise.

The New York Edison Company has acquired the absolute ownership of five franchises granted by the old City of New York. One of these, the original franchise of the Edison Electric Illuminating Company, is for "illumination" only, and does not provide for any compensation to the city in the way of free lighting. (See Table I.) The other franchises are for "electrical purposes" generally, and contain the provision that the grantee must furnish to the city free of charge one street arc light for every fifty arc lights furnished to private consumers. There is no question but that the several companies to which these four franchises were originally granted actually engaged in the supply of both light and power under their grants from the city. The mains of all these companies were laid in the high tension conduits owned by the Consolidated Telegraph and Electrical Subway Company, while the mains of the old Edison company were laid in the low tension conduits of the Empire City Subway Company, Limited. If the original franchise does not authorize the distribution and sale of current for heat and power but only for light, the Edison company must perforce make use of its other franchises so far as its power and heating business is concerned. Under these franchises, the company must furnish to the city one street arc light *free* for every fifty arc lights furnished to private consumers. But under the original Edison franchise, no free lighting was required. Which should apply? As a matter of fact, the company was supplying twenty-three free lamps, representing the admitted obligations of the four constituent companies at the time they were consolidated. This virtually assumes that all additional business has been done under the original franchise and is not covered by the free-lighting clause.

The situation of the United Electric Light and Power Company is similar. In the case of *West Side Electric Company* v. *the Consolidated Telegraph and Electrical Subway Company*, 187 N. Y. 58, the Court of Appeals held that the former Board of Electrical Control of New York City had no franchise-granting

authority. Prior to this decision, which was rendered only in 1907, a large amount of construction work had been done under permits from the Board of Electrical Control by companies having no franchises from the Board of Aldermen. Among these companies was the United company, which acquired a valid franchise only through the absorption of the United States Illuminating Company. But the United States franchise authorizes the distribution and sale of electricity only for "purposes of illumination." If this phrase be strictly construed, the company does not have authority to distribute and sell current for power. It controls two companies that have franchises not limited to "illumination," but until they are consolidated with the United, or until the United purchases one of these franchises, it must consider that it is operating the lines laid under the permits from the Board of Electrical Control in accord with the terms of the United States franchise or it is operating them illegally.

The companies in Queens and Richmond have a more complicated situation but less serious from a financial standpoint.

Hereafter, when applications for merger, consolidation or purchase are presented for approval, this matter will need careful consideration lest it be made the occasion whereby the obligations of a company may be escaped by the substitution of a franchise containing few or no restrictions.

Growing Complexity of Franchises.— The first electric lighting franchises were models of brevity, simplicity and laxity. Extremely valuable rights were given away without limit as to time or the rates to be charged, virtually without compensation and without any other provisions to protect the interests of the public except a few minor clauses as to damage to paving and pipes in the streets. Indeed, many of the later franchises granted by the local authorities in the outlying areas were equally devoid of adequate restrictions. In some instances signed documents were given out without any entry in the official minutes. In certain franchises, the language is obscure or ungrammatical; dates are omitted, or important blanks unfilled; interlineations or changes appear without proper authentication.

Just prior to January 1, 1898, when Greater New York came into being, many local authorities worked overtime giving away

valuable rights. The reason is obvious. The new charter limited the life of franchises to twenty-five years and a renewal term of twenty-five years subject to revaluation. The perpetual franchise was doomed, and those who wished to give or to get perpetual rights appreciated that the time was limited within which to carry out their plans. Further, upon December 31, 1897, the many local functionaries would cease their arduous labors, to be superseded by other persons in other official positions. Hence, the need for haste in the franchise industry.

It is doubtful, however, whether their efforts were entirely successful. In the case of *Blaschko* v. *Wurster,* 156 N. Y. 437, the Court of Appeals held that after May 4, 1897, the date when the Greater New York charter was approved, no franchise could be granted by any local authority within the present limits of the Greater City except in accordance with the provisions of this charter. It was provided in section 73 of the charter that "after the approval of this act no franchise or right to use the streets, avenues, parkways or highways of the city shall be granted by the municipal assembly to any person or corporation for a longer period than twenty-five years, but such grant may at the option of the city provide for giving to the grantee the right on a fair revaluation or revaluations to renewals not exceeding in the aggregate twenty-five years." In the case mentioned the court held that "the city referred to was of course the new city, created by the act, and the prohibition applies to all the territory embraced within it and consequently applies to Brooklyn." In the opinion of the court, the words "Municipal Assembly" were employed in section 73 "to designate the aldermen, common council or governing body having the power to deal with the subject matter of the restriction prior to the date when the new government was to go into full operation." The necessary consequence of this decision is that franchises granted by the former local authorities for territory now included in Greater New York after May 4, 1897, for more than twenty-five years with a renewal period of twenty-five years are invalid beyond these periods and possibly wholly invalid *ab initio.* The franchises as to which this question may arise are:

1. Town Board of Jamaica, now owned by the N. Y. & Queens Elec. Lt. & Power Co.
2. Village Trustees of Rockaway Beach, now owned by the Queens Bor. Gas & Electric Co.
3. Queens County Supervisors, now owned by the Queens Bor. Gas & Electric Co.
4. Southfield Highway Commissioners, now owned by the Richmond Lt. & R. R. Co.
5. Southfield Town Board, now owned by the Richmond Lt. & R. R. Co.
6. Westfield Highway Commissioners, now owned by the Richmond Lt. & R. R. Co.
7. Westfield Town Board, now owned by the Richmond Lt. & R. R. Co.

All but the first and fourth of these franchises are "unlimited," that is, they are silent as to the period for which the franchises are to run. It may be claimed that these franchises are valid but that the statutory provision limiting franchise terms to twenty-five years applies to them. Under the decision of the court above referred to, they certainly are not perpetual. The first franchise is for a term of forty-five years, which is not in conformity with the charter provision, and, therefore, it is invalid in whole or in part. The fourth franchise was expressly stated to be perpetual, unless the courts decreed that such provision was illegal, in which case twenty-five years plus twenty-five years was to apply.

Attempts at Regulation.—Although the early grants provided too few safeguards, some of the later ones went toward the other extreme. It soon became quite customary to provide that the Board of Aldermen or Council could pass "reasonable regulations" relating to service, that the streets and sidewalks disturbed must be properly restored, and that street work should be done under the supervision of some city official. But certain franchises undertook to specify in detail how deep poles should be set, their material, height, diameter, number of sides, color, location, etc.; how wires should be strung, the character of insulation, height above street surface, method of guarding, etc.; length of street to be opened at one time; candle power of incandescent lamps, etc. In Staten Island particularly, adjacent areas have varying requirements, so that what is proper in one locality is forbidden in another.

Many of these franchise provisions are already obsolete or useless. But it should be remembered that they were enacted before

the theory of state control of public service corporations had become generally recognized and at a time when many doubted the efficacy of local regulation. It was thought that as a franchise partakes of the nature of a contract, possibly this basis would be more effective. Hard and fast standards fixing each detail are inelastic and usually become after a time ineffective or such a hindrance to development that they are disregarded. In order that the interests of the public may be constantly protected, it must be possible for some public authority to rescind effete regulations, to establish new ones and thus to keep pace with changes in the industry and the needs of the community.

Upon rather important matters, many of the grants contain no provisions whatever. Few specify a date before which service must begin. Indemnity bonds and bonds for faithful performance of the obligations imposed are often missing. Formal notice of acceptance is seldom required. Little is said about character of service to be rendered, rates to be charged, testing of meters, conditions of supply, and many other matters that have become important. Doubtless many of these matters may be more effectively handled through administrative control, but it shows how often essential points may be overlooked and less important matters may absorb attention.

Corporate Powers.— Reference has already been made to the fact that certain of the early franchises authorized the distribution and sale of electric current for "purposes of illumination" only. At least eight important grants are so worded or confer no authority to distribute current for heating and power. When the attention of counsel for the New York Edison Company was called to this fact, he admitted that the wording of the original Edison franchise, for example, did not specifically include current for power, but he argued that a broad construction of the language would cover it. He stated that when the first franchise was granted in 1881, electricity was not used for power, that it was used only for lighting, that its utilization for heating and power is incidental and that "lighting" or "illumination" would cover other incidental purposes. A similar position was taken by the officials of the Brooklyn Edison company.

It would seem rather far-fetched to say that the use of electricity for power is incidental to lighting when the former is at

least equal to one-half of the latter, as in the case of the New York Edison Company, and perhaps is 40 or 50 per cent of the total consumption.

It is doubtful, further, whether the argument is logical that as the power use of electricity was not known in 1881, it should be read into the franchise. If it was not known, how could the Board of Aldermen have intended to include it in the franchise? If they did not intend to do so and if the language does not cover it, upon what logical ground can the companies assume the authority? Further, the use of electricity for power was certainly known early in the eighties and yet one of the franchises granted afterwards is limited expressly to "electricity for light only." It is hardly possible in this case at least to accept the doctrine that such language covers every other possible use to which electricity may be put.

In the case of grants between private parties, it is the rule of law that the language used should be construed in favor of the grantee, but in the case of grants from the public to private parties, it is the rule that the grant should be narrowly construed. Franchises, therefore, should be strictly construed in favor of the public.

If franchises are to be construed exactly as they read, none of the mains laid by the Edison Company of New York prior to March 1, 1900, could have been used for the distribution of current for heating and power. Yet many and perhaps most of them were so used. It would also follow that the United Electric Light and Power Company and the Brooklyn Edison company have been and are operating in part illegally. The Westchester Lighting Company, the New York and Queens Electric Light and Power Company and the Queens Borough Gas and Electric Company are exceeding their powers in parts of the areas they supply.

This subject is important not merely from the standpoint of acts *ultra vires,* but from other standpoints. If the Edison company must look elsewhere than in the franchise of 1881 for powers it is using, it must increase the amount of free lighting it gives to the city. The United company does not own a franchise that gives it authority to sell electricity for general purposes, and it would need to get a new franchise or purchase one from a controlled company. Other companies also would need to obtain new franchises

from the city. This is by no means a difficult matter, but they could not get perpetual franchises, the compensation would doubtless be much larger than is called for in the old grants, and other restrictions would be imposed. Naturally, the companies are not anxious to substitute such franchises for the ones they have, but with a cloud upon their title it would be advantageous to have the matter adjudicated, and if necessary then to secure full authority through new grants of power.

Limitation of Rates.— None of the franchises granted by the old City of New York contain any provision prescribing or limiting the rates that may be charged. The New York Edison and the United companies and all others having rights in Manhattan and The Bronx west of the Bronx river may fix any rates they please so far as the franchises go. The companies serving the district east of the Bronx river are also practically without limit. One franchise, for the old town of Pelham, provides that public lighting shall be free for three years (1890–1893) and that thereafter it shall be one-half the price charged to *private* consumers. In South Mount Vernon, the rates must not exceed those in Mount Vernon.

In connection with the granting of the very first franchises, there was practically no discussion of this subject, but in later years the omission of restrictions was intentional and considerable discussion was had prior to official action. The explanation is fivefold. In the first place, competition was relied upon to keep rates within reasonable bounds. It was not thought that this public utility — electricity supply — was different from industries generally. When it looked as if the early companies were apportioning the city among themselves or pursuing a general understanding, franchises were given to other companies. A committee report to the Board of Aldermen said in 1887:

"It rests with this board to say whether this process of competition, which must result in cheap and better light to our constituents, shall take place. * * * If we grant the consents asked for by companies who have applied to us the inevitable effect of our action and the consequent free competition must be such a reduction in the charges for electric lighting as will not only make it possible for the Board of Street Lighting to carry out the request embodied in the resolution of the Vice-President, but will also bring the free use of electric lighting within the means of thousands who are now prevented by the practical monopoly of the business enjoyed by a few corporations."

We have seen how far this theory has been successful, but the report was accepted and six new franchises were passed and approved by the mayor.

The fact that the first franchises were granted without limitations suggests a reason why they were omitted in later ones. If competition was to be relied upon, would it be fair to impose conditions upon new companies that were not placed upon the early companies — their competitors? Would this be free competition and fair treatment? The argument was quite effective and successful.

The third explanation was an opinion of a corporation counsel which said that the aldermen had no power to regulate rates in an electric light franchise. This opinion may have been unsound; in Brooklyn, the rates were limited in the grant; but it was accepted in New York in 1887 as a valid reason.

Fourthly, it was argued that the industry was new, that the cost of supply could not be determined with certainty until the companies had been operating for some time, and that limits could not be fixed that would be reasonable for all companies alike, as the cost would depend upon the number of consumers a company would secure. There was considerable force in these arguments against a fixed and unchangeable limit, for conditions do constantly change, and if limits had been fixed in the eighties, they would be useless and obsolete to-day. But it was quite possible to provide for public control over rates that would be effective and yet adjustable to changing conditions and demands.

The last argument was unanswerable. It was that if competition did not prove effective, if combinations were formed, and if excessive and unreasonable prices were demanded, the state legislature would have the power to intervene and could regulate prices either directly or indirectly. The aldermen and city officials were here upon sound footing, but they did not foresee how soon it would be necessary for the legislature to intervene and how far public control would need to go.

All of the Brooklyn franchises, even the earliest ones, with one exception — the Flatbush Gas Company's electric franchise — have rate limitations. The first three franchises (granted 1884 and 1888) fix a maximum price for city lighting of 70 cents per night for each 2,000-candle-power arc light and of 15 cents per

night for each 16-candle-power incandescent light, each to burn all night. The maximum prices for private consumers were 75 cents and 15 cents respectively, but to cover only from dark until midnight. The Kings County franchise (1894) contains no limitation as to private rates but fixes a maximum rate for city arc lighting of 40 cents per day for each 1,200-candle-power light. Under the state franchise, the limit for such service is 30 cents per day and 35 cents for private consumers. This franchise is not being exercised at present, and the other limitations are considerably above the rates now being charged.

Of the twenty-one grants analyzed for the Borough of Queens, fourteen contain no limitations whatever as to the rates to be charged. One other merely states: "On more liberal terms than are at present obtainable." Two others prescribe that the rates shall be "fair and reasonable." Only four have maxima that may be considered as limitations, and these apply only to the villages of Whitestone, College Point and Far Rockaway and to the area of the town of Flushing outside of the incorporated villages. The grant covering the latter area provides that the rates shall not "be in excess of the rates at the time generally charged for similar service by corporations engaged in the same business within the limits of the town of Flushing." As all these areas are now supplied by the same company, this provision is practically valueless at present. The Whitestone franchise provides that rates charged to private consumers shall not exceed those in effect in the village of Flushing, and the College Point franchise fixes the rates in Flushing and Whitestone as the limit. There being no franchise limits in the Flushing franchise, these clauses are ineffectual. The "Citizens" franchise for Far Rockaway contains the most complete schedule yet mentioned, the rates varying for the different kinds of service.

Of the Richmond franchises now actually in operation, only two contain rate limitations. One prescribes a maximum commercial rate of one cent an hour for 16-candle-power incandescent lights, and "$100 for an electric arc light." The other provides that public lighting shall not cost more than $17.50 per lamp per annum or more than the grantee bids for furnishing light to other municipalities.

It is quite evident that none of the grants adequately provides for protection against unreasonable rates. They either lack any limitations whatever or contain clauses that appear to restrict but have no vitality. Fixed maxima are valueless because non-adjustable to changing conditions. Standards that depend upon rates in other localities are unsound, because local conditions may vary and because there is no guaranty that the rates in these localities will be reasonable. The only sound method under existing conditions is to omit detailed rate limitations from franchises and to place in the hands of an administrative body sufficient power to alter rates that have been found to be unreasonable.

Compensation.— The first three electric franchises (granted in 1881) exacted the sum of one cent per lineal foot of street occupied whenever a permit was issued to open pavements or sidewalks for the laying of tubes, wires, etc. This amount was not an annual payment but paid once and for all when the tubes or wires were laid. All the other valid franchises applicable to Manhattan and The Bronx west of the Bronx river, with one exception, fixed a rate of one cent per lineal foot of street opened for other than arc lights, and required the grantee to supply one street arc light free for every fifty furnished to private consumers. The one exception is the Mutual franchise, which apparently has never been exercised. The compensation to be paid to the city is 20 per cent of its gross receipts. Possibly this offers an explanation why the franchise has never been used.

The proposal to issue franchises upon such meager terms aroused Mayor Grace, who vetoed all of the franchises granted in 1881. He said in his veto messages:

"The resolution does not provide for any adequate return to the city treasury for the valuable franchise proposed to be granted. The sum of one cent per lineal foot of streets opened for the purpose of laying pipes or wires is entirely inadequate. * * * This resolution proposes to grant in perpetuity a franchise, the value of which cannot fail to be very great, without any appreciable return to the city treasury."

"There is no reason why the city should not be likewise properly compensated, especially in view of the public annoyance caused by the breaking up of the streets and the increasing danger of injury to city water pipes and sewers by the multiplication of pipes of the various corporations under the roadways."

Nevertheless, all of these franchises were passed over the Mayor's veto, and later grants were approved by the mayors then in office.

As a matter of fact, even the small compensation above called for is not being paid. The payments per lineal foot of streets opened are not made because all of the underground conduits are laid by the electrical subway companies. The Edison and United companies never open the streets. The number of free lights furnished under the various franchises is twenty-three, representing the admitted obligations of the various constituent companies before they were merged into the Edison company. The company claims that the free lighting provisions are no longer applicable because the company no longer furnishes lamps; it furnishes *current,* the consumer furnishes his own lamps. It is interesting to note that the city has never, according to an officer of the company, demanded the free lighting referred to in the franchises.

Only two franchises in The Bronx require compensation. One calls for 32-candle-power incandescent lights, current to be supplied and the lamps maintained. The other requires public lighting to be furnished at one-half the prices charged private consumers.

In Brooklyn, also, the early franchises required compensation in the form of free lighting. The first two issued called upon the grantees to erect and maintain for the city four free arc lights of 2,000 candle power each to burn all night, and in addition one free light for every fifty furnished to private consumers. The fire and police departments were also to have the right to place their wires upon the poles of the company without charge. In the next franchise, granted four years later, it was provided that the grantee should erect and maintain four arc lights of 2,000 candle power each or furnish their equivalent in electric current for incandescent lighting at the option of the city; also that the city should be furnished free one arc light for every fifty arc lights furnished to private subscribers and one incandescent light for every thirty customers using incandescent lights. The fire and police departments were to have free use of the conduits.

The "State" franchise, which is not now being exercised, provides that the operator shall pay $500 per annum to the city and one per cent of the gross receipts. The same provisions appear in

the Kings County franchise, but appear not to have been carried out as originally intended. The Kings County company has leased its property to the Brooklyn Edison company, and under the terms of this lease the Edison company pays directly to the holders the interest on the bonds of the Kings County company; also all taxes and assessments. The entire net profits arising from the operation of the plants of both companies are then paid over to the Kings County company. Under this arrangement the Kings County company pays the one per cent tax only upon the net profits, and does not pay one per cent upon interest, taxes or assessments paid directly by the Edison company. If the Kings County company were to pay these charges the amount of tax paid would be increased by over $4,000 a year.

Four franchises now in force in Queens exact compensation. In one it is in the form of one cross-arm on poles for the use of the police and fire departments. Three require one free light for every ten lights paid for by the villages. Richmond is in striking contrast. The cash payments range from one-half of one per cent of gross receipts for the first ten years and one per cent thereafter, to one and one-half per cent the first five years, three per cent the second five years and five per cent thereafter. In one case, the company must pay a percentage, the village counsel's fee of $250 and the village engineer's fees to be agreed upon between him and the grantee. The free lighting is most varied and prescribed in great detail, including the lighting of village halls, fire houses, public schools, a park and churches.

It is quite evident from the above that there has been neither uniformity nor wisdom in the fixing of compensation. Each locality has followed its own inclination. The burden is lightest where it could equitably be heaviest, and *vice versa*. The free-service basis is unsatisfactory, for it is difficult to measure and unequal in application. A gross receipts percentage is usually definite and easily computed, but often unfair, having no direct relation to earning power. If it were possible, a complete revision of the whole question of compensation would be beneficial and equitable.

Duration of Grants.— Strange as it may seem, not one of the franchises now applicable to the Boroughs of Manhattan, The Bronx and Brooklyn, with two minor exceptions, contains any provisions regarding the duration of the grant. All are silent

except one in The Bronx and one in Brooklyn. The former reads: "An *exclusive* franchise be given * * * in this village of Eastchester * * * for the period of five years." The company now owning this franchise claims that the franchise is perpetual and that the *exclusive* feature of the grant was for five years. It may be claimed in reply that the entire franchise ended in five years, or 1900, and that the company now has no franchise whatever. The company also asserts that it has continued to operate since 1900, that its acts have been acquiesced in by the city authorities, and that, therefore, it has acquired a franchise by consent. This ground is certainly untenable, but it indicates the importance of having this question of "franchise by acquiescence" promptly settled.

The only Brooklyn electric franchise containing a time limit is the one issued in December, 1909, to the Flatbush Gas Company covering a very limited area on either side of Ocean Parkway from Foster avenue to the ocean. It runs for twenty-five years from 1907, with the right of the grantee to have a further period of twenty-five years upon a fair revaluation of the grant.

In Queens, there are only three franchises in which the period of operation is stated — two Jamaica grants made in 1896 and 1897 for forty-five years, and one in Flushing for twenty-five years with a renewal period of twenty-five years on a revaluation to be determined in a unique way. A board of three, or a majority thereof, is to revalue the franchise. One member is to be named by the company, one by the mayor and the third by these two. If the mayor shall fail to appoint or the two to name a third, then the company may select the president of a bank or trust company in New York City, who shall name all three appraisers.

Two other franchises provide that the grant may be revoked by the municipal authorities whenever in their opinion the public interests shall so demand, and if so required, the company shall remove its poles and wires from the streets and restore them to their proper condition. One franchise was granted in 1886 and the other in 1889. The latter is not in force, having been superseded; the former was issued to a company now defunct.

Only four franchises now operative in Richmond contain clauses relating to the period of duration. One fixes a twenty-year term and one twenty-five years. Another very formally states that it "shall not be revocable except by due process of law," but fails to amplify this general phrase. Evidently the United States Consti-

tution was not a sufficient safeguard. The fourth was born of wisdom, as it confers authority "in perpetuity unless the courts shall finally decree that under the provisions of the charter of Greater New York, or otherwise, this board had not the power at the time of granting said consent and permission to grant the same to the said company in perpetuity, in which event the consent and permission given by this board shall exist, obtain and be vested in the said company for the period of twenty-five years, or for the maximum period for which this board had or now has the power to grant the same in case the said maximum period is other than twenty-five years." Reference has already been made to the decision of the Court of Appeals in *Blaschko* v. *Wurster* which disposes of the perpetual feature. This is the only valid franchise now being operated that specifically mentions a perpetual term, except the town of Northfield grant of January 14, 1897, which was declared not to be "revocable except by due process of law." The others are all silent or fix terms. The case just cited also affects one of the forty-five-year franchises in Queens already noted.

None of the franchises which fix a period state, except the most recent grant to the Flatbush Gas Company, what shall be done when the term ceases. Several very important questions will arise. May the local authorities require the removal of the company's fixtures from the streets? May the company in the absence of affirmative action on the part of the local authorities continue to maintain and operate its lines? Will the title to the property in the streets vest in the city the instant the period expires? May the city sell or lease this property to another company or begin municipal operation with it? The franchises suggest no answer to any of these questions.

It is interesting to note that the limited-term grants date from 1896 and 1897. The hostility to perpetual franchises culminated in the passage of the Greater New York charter, but no electric franchises affecting considerable areas have been passed since January 1, 1898, when the Greater City came into being. Practically all of the city had been plastered with grants before, thanks to the activities of the local bodies who saw that they must act quickly or not at all. The first gas franchises, passed in the early years of the last century, were for limited terms; but the practice was changed, and it was several decades before the injustice of perpetual franchises was again recognized.

II. Franchises Granted by the Old City of New York

1. *The Original Edison Franchise.*— The first electric light franchise granted by any local authority within the present limits of Greater New York was passed by the Board of Aldermen of the City of New York on March 22, 1881, and re-passed over the veto of Mayor William R. Grace on April 19, 1881, by a vote of 19 to 2. This franchise was granted to the Edison Electric Illuminating Company of New York, and is very brief and simple in its terms. It is in the form of a resolution, without time limit, authorizing the company "to lay tubes, wires, conductors and insulators, and to erect lamp-posts in the streets, avenues, parks and public places in this city for the purpose of conveying, using and supplying electricity or electrical currents for purposes of illumination."

The franchise contains four restrictions:

First, it requires that all excavations in the streets and all removals and replacements of pavements shall be done under the direction of the Commissioner of Public Works.

Second, it requires that the company's operations shall be subject to such further conditions as to security against damage to sewers, water pipes, gas pipes and other pipes as may be prescribed by the Mayor, the Comptroller and the Commissioner of Public Works.

Third, it requires that whenever the company is given a permit to open any streets, pavements or sidewalks for the purpose of laying its tubes, wires, etc., it shall pay the city a sum equal to one cent per lineal foot of the streets occupied under such permit.

Fourth, the franchise resolution specifically states that it shall not be deemed to authorize the company to lay pipes or erect lamps to be used for illuminating by means of gas.

In his veto message Mayor William R. Grace said:

"The resolution does not provide for any adequate return to the city treasury for the valuable franchise proposed to be granted. The sum of one cent per lineal foot of streets opened for the purpose of laying pipes or wires is entirely inadequate and there is no provision for securing even this small sum to the city by bond, deposit or otherwise. The opening of streets and replacing of pavements under such franchises should be permitted only upon

condition of the work being done by the Department of Public Works, after a deposit with the city of an amount equal to the entire expense to be incurred. Section 18 of the Charter prohibits the Common Council from taking or making any lease of any real estate or franchise save at a reasonable rent and for a period not exceeding five years. This resolution proposes to grant in perpetuity a franchise, the value of which cannot fail to be very great, without any appreciable return to the city treasury.

"The franchises in the gift of the Common Council should be so utilized as sources of revenue as to greatly reduce taxation for the expenses of the city government. I earnestly recommend that a general ordinance be passed to permit of the disposal of franchises for electric lighting with proper security for the collection of revenue from them."

2. *The Brush Franchise.*— The second electric light franchise was given to the Brush Electric Illuminating Company. It was passed by the Board of Aldermen on April 12, 1881, while the Mayor's veto of the Edison franchise was still pending. Under date of April 14, Mayor William R. Grace vetoed the Brush franchise also, upon grounds similar to those quoted above. However, on May 3 it was passed over the Mayor's veto by a vote of 19 to 2. This franchise is also a brief and simple document. By it the Brush Electric Illuminating Company of New York was "authorized and empowered to lay, erect and construct suitable wires or other conductors, with the necessary poles, pipes or other fixtures in, on, over and under the streets, avenues, public parks and places of the City of New York for conducting and distributing electricity, and to the full extent that could with the consent of the municipal authorities of the City of New York be given to any gas light company," under the provisions of chapter 512 of the Laws of 1879, authorizing gas companies to substitute electricity for gas. The restrictions contained in the Brush franchise are identical with those contained in the Edison franchise, as already set forth.

3. *The United States Franchise.*— The third electric light franchise granted by the old City of New York was given to the United States Illuminating Company of New York. The resolution was passed by the Board of Aldermen, vetoed by the Mayor and repassed over his veto on the same dates upon which the Brush franchise went through similar experiences. Under the terms of the franchise, the company was "authorized and empowered to lay tubes, wires, conductors and insulators, and to

erect lamp-posts in the streets, avenues, parks and public places in this City for the purpose of conveying, using and supplying electricity or electrical currents for purposes of illumination." The restrictions contained in the franchise are precisely similar to those contained in the preceding franchises.

In the case of this franchise the Mayor said:

"The failure to secure proper revenue to the city from valuable franchises within the gift of the Common Council is one of the causes of our heavy burden of municipal debt. * * * The principal use of illuminating franchises is not designed to be the lighting of the streets, but the furnishing of illuminating agents to private customers at a profit. The grantees expect to make money from light supplied by them, either for private or public use. If they were obliged to enter upon and occupy private property for this purpose they would be required to pay for the right of way, and to compensate owners fairly for the inconvenience and damage caused by their operations. There is no reason why the city should not be likewise properly compensated, especially in view of the public annoyance caused by the breaking up of the streets and the increasing danger of injury to city water pipes and sewers by the multiplication of pipes of the various corporations under the roadways."

4. *Electric Lines Franchise and Electrical Subways.*— Chronologically the next franchise affecting electric lighting was granted in 1883 to the New York Electric Lines Company, giving permission "to lay wires or other conductors of electricity in and through the streets, avenues and highways of New York City, and to make connections of such wires or conductors under ground by means of the necessary vaults, test boxes and distributing conduits, and thence above ground with points of electrical illumination or of telegraphic or telephonic signal, in accordance with the provisions of an 'Ordinance to regulate the laying of subterranean telegraph wires and electric conductors in the streets of the city, passed by the Common Council and approved by the Mayor Dec. 14, 1878.'" This franchise was not strictly an electric lighting franchise. It is now owned by the Great Eastern Telephone Company. Further data in regard to it will be found in Exhibit II.

By chapter 534 of the Laws of 1884 the Legislature required telegraph and electric light companies in New York City to place their wires under ground. On June 13, 1885, the Legislature passed another act, being chapter 499 of the Laws of that year,

providing for the appointment of Commissioners of Electrical Subways in cities having a population of more than 500,000. In Brooklyn the Subway Commissioners were to be appointed by the Mayor, but in New York City by the Mayor, the Comptroller and the Commissioner of Public Works, who at that time constituted the Board of Street Lighting under section 69 of chapter 410 of the Laws of 1882, better known as the New York City Consolidation Act. The act establishing the Boards of Electrical Subway Commissioners in New York and Brooklyn gave these commissioners authority to pass upon the plans of all companies intending to place electrical conductors under ground. The law provided that unless a suitable plan for underground construction should be proposed and in use within sixty days after the passage of the act the Subway Commissioners were to go ahead and devise and make ready for use such a general plan as would meet the requirements of the law requiring all telegraph and electric wires to be placed under the streets, and gave the Commissioners full authority to compel all companies operating electrical wires to use the subways so prepared. The Board of Commissioners of Electrical Subways for the City of New York held its first meeting on July 20, 1885, and continued its operations until July 5, 1887, when under a new law passed by the Legislature the Mayor was joined with the Subway Commissioners to constitute the Board of Electrical Control. This Board continued in existence until the establishment of Greater New York, January 1, 1898, when its powers were transferred to the new Department of Public Buildings, Lighting and Supplies. When the charter was again revised in 1901 these powers were transferred to the Department of Water Supply, Gas and Electricity, where they still remain.

A contract was entered into between the Electrical Subway Commissioners and the Consolidated Telegraph & Electrical Subway Company on July 22, 1886, under which the company was authorized and required to construct electrical subways for the use of all companies lawfully operating electric wires in the City of New York. This agreement was modified by a contract under date of April 7, 1887, between the same parties. These contracts were expressly ratified by an act of the Legislature of 1887. In 1890 and 1891 by new contracts and legislation the work of constructing and operating electrical subways in New York City was divided

between two companies. The Consolidated Telegraph & Electrical Subway Company retained control over the conduits to be used for high tension wires. The Empire City Subway Company, Limited, took over the conduits used for telegraph and telephone wires, and also the conduits used by The Edison Electric Illuminating Company for its low tension distributing system, and acquired the right to construct subways for these uses in the future.

These companies do not supply electricity for any purpose and have been omitted from further consideration in this report.

5. *The First Harlem Franchise.*— Soon after the Board of Electrical Subway Commissioners was organized and an active campaign was begun to place electric wires in conduits under ground, a large number of new companies applied to the Board of Aldermen for franchise rights. The Harlem Lighting Company was authorized to operate in that portion of Manhattan Island above 86th Street and that portion of The Bronx west of the Bronx river. This resolution was adopted November 26, 1886, and approved by the Mayor December 7. The company was authorized "to erect, construct and maintain suitable wires or other conductors over the streets and avenues" in the wards named "for conducting and distributing electricity for electric lights, subject to the powers of the Subway Commission, under the supervision of the Department of Public Works in the said Twelfth Ward, and under the supervision of the Department of Public Parks in the said Twenty-third and Twenty-fourth Wards, but without the privilege of erecting poles."

6. *The East River Franchise.*— On March 29, 1887, a franchise was given to the East River Electric Light Company, with permission "to place, construct and use wires, conduits and conductors for electrical purposes in the City of New York, and over and under the streets, avenues, wharves and piers therein or adjacent thereto, according to such plans as may be directed, approved or allowed by and subject to the powers of the Electrical Subway Commissioners and to the provisions of chapter 499 of the Laws of 1885, and under the supervision of the Commissioner of Public Works and of the Department of Public Parks within their respective territorial jurisdictions; and subject also to all existing ordinances applicable thereto, and to all reasonable regulations of the privilege conferred which the Common Council may hereafter impose by ordinance or otherwise."

The original resolution was introduced in the Board of Aldermen on February 8, 1887, and applied only to streets and public places in the Eighteenth Ward. The resolution was referred to the Committee on Lamps and Gas, which reported:

"That having examined the subject they believe that the best interests of the city (the greatest consumer of electric light) as well as that of all private consumers require that the permission asked be given, and that the same be given immediately, inasmuch as within ten days advertisements for proposals to furnish electric light to the city will be published, to take effect May 1, next, and that only by the passage of such a resolution can competition be had with the existing monopoly of the Brush-United States electric light combination, and that having amended said resolution to secure to the city a proper compensation for the permission given, and making the same general, they therefore recommended that the said resolutions be adopted."

The compensation referred to in this report, as provided for in the franchise granted to the East River company, was the required furnishing by the company free of charge to the city for maintenance or otherwise, of one standard candle power street electric arc light of power equal to the average required at the time in contracts with the city, for every fifty arc lights furnished by the company to other consumers. The franchise also required that the company should pay the city a sum equal to one cent per lineal foot of streets occupied under any permit issued to open the streets, pavements or sidewalks for the purpose of laying conductors for the operation of incandescent or other than arc electric lights. With these conditions attached the franchise was passed by the Board of Aldermen by a vote of 17 to 7, and was not vetoed by the Mayor.

7. *The Omnibus Electric Franchise.*— On October 27, 1886, the Mount Morris Electric Light Company had petitioned the Board of Aldermen for the right to operate in certain streets in Harlem. On December 30, 1886, a resolution was introduced in the Board of Aldermen to extend the franchise of the Harlem Lighting Company to cover the whole city, and requiring the company to maintain one 2,000-candle power street light for every 50 lights furnished to private individuals. This resolution was referred to the Committee on Lamps and Gas and remained there. On January 18, 1887, a resolution was introduced and referred to a committee authorizing the Mount Morris Electric Light Company to operate in that part of the city north of 110th Street.

On April 19, 1887, petitions were received by the Board of Aldermen from the Waterhouse Electric and Manufacturing Company and the American Electric Manufacturing Company for franchises to operate throughout the city. These petitions were also referred to a committee. The Ball Electrical Illuminating Company also asked for a franchise on May 10, 1887, and its petition was referred to a committee.

In the meantime several unsuccessful efforts had been made to discharge the committees from further consideration of the various electric light petitions and resolutions which had been referred to them. Finally, on May 17 the president of the Board of Aldermen offered a resolution to the effect "that permission and authority are hereby given and granted to the electric lighting companies not now holding any such permission, and whose bids for lighting the streets of this city or any part of the same for the ensuing year shall be accepted by the Board of Street Lighting, to locate and erect poles, hang wires and fixtures thereon, and to place, construct and use wires, conduits and conductors for electrical purposes * * *." As compensation the companies were to furnish and maintain free of charge at least one street arc light for every 50 arc lights furnished to private consumers, and to pay the city at the rate of one cent per lineal foot for all streets occupied under any permit issued to open the streets, pavements or sidewalks for the purpose of laying electric light conductors for the operation of other than arc lights.

This resolution precipitated a serious struggle. The whole matter was referred to the Committee on Lamps and Gas, with instructions to report at a special meeting to be held three days later, on May 20. On the latter date the Board of Aldermen received from Mayor Abram S. Hewitt a communication in regard to the electric light situation of the city so far as it related to street lighting. The Mayor, the Comptroller and the Commissioner of Public Works constituted at that time a commission whose duty it was to make contracts for public lighting. Mayor Hewitt said that the price for electric lights during the preceding year had been 70 cents per night per lamp. He continued:

"The lowest bid after readvertisement made during the present year was at the rate of 50 cents per night for lights of 1,000 candle power. One of these bids was accepted because it covered territory in which there was no

competition. * * * All other bids were rejected as being irregular, and new proposals were invited, which were opened on the 16th instant. Several of these bids were made upon condition that authority should be given by the city for erecting poles and stringing the wires necessary for the transmission of the electric current. Such bids could not, of course, be accepted even though they were the lowest and would save to the city annually a large amount of money. Under the circumstances the Gas Commission have adjourned a decision until Monday next in the hope that the Common Council will put the commission in a position to accept the lowest bid by giving authority to such bidder, whoever it may be, to establish the lights throughout the city, provided adequate security is given for the performance of the contract. It is now evident that the city can be supplied with electric lights at a cost not greater than that which heretofore has been paid for lighting with gas. The preference of the public for the electric light is pronounced and the advantages in the prevention of crime, the good order of the city and the general comfort of the inhabitants is so marked that the commission feel it to be their bounden duty to extend the electric lighting system so far as the means at their command will permit. This cannot be done without the co-operation of your Honorable Body in giving the necessary consent. On what principle this should be denied I cannot see. By refusing to give the consent you condemn the city to imperfect illumination and you increase the cost unnecessarily of the lights which ought to be provided for the public accommodation. Every consideration, therefore, of public duty would seem to invite you to pass such a resolution as will put the Gas Commission in a position to provide the city with lights at a reduced cost and upon the enlarged scale required by public opinion."

At the same session of the Common Council two reports were received from the Committee on Lamps and Gas. The minority recommended the passage of the resolution granting permission to any electric light company whose bids for public lighting put in May 16, 1887, should be accepted by the Board of Street Lighting, in those streets and public places for the lighting of which such company should be the lowest valid bidder. The resolution further required that the company should furnish the city free of charge one full arc light for every five arc lights furnished to other consumers, and should furnish on the streets and avenues where it received a franchise electric lights at the same rates as were to be charged the city under its bids, eight incandescent lights being rated as equal to one 1,000-candle-power arc light. Any such company would furthermore be required to pay the city a sum equal to one cent per lineal foot of streets occupied by it, and would be required to give a bond of $100,000 to insure its compliance with the provisions of the resolution.

The majority of the committee offered a resolution to give a general franchise to the five electric lighting companies whose separate applications were then pending, and requiring the companies to supply the city with one free arc light for every 50 arc lights furnished to private consumers, and to pay one cent per lineal foot for the streets occupied.

At the same session a communication was received from the Corporation Counsel advising the aldermen that under the law they would have no power to regulate the price to be charged either to the city or to private persons for electricity furnished by the companies. The Corporation Counsel's opinion was to the effect that the price of electric light could not be regulated even at the time the franchise was granted as a condition of the consent of the local authorities.

As a result of the communications and debate the indefinite resolution offered by the minority of the committee was adopted. At the next session of the Board of Aldermen, however, on May 24, the resolution was vetoed by Mayor Hewitt on the ground that it did not "afford the opportunity to all companies who in good faith intend to compete for lighting the streets of the city, but is expressly limited to those companies whose bids were put in on the 16th of May, 1887." He said that the limitations contained in the resolution would in effect cut off from competition all companies except the Brush Electric Illuminating Company, the United States Electric Illuminating Company and the East River Electric Light Company. He said also that representatives of the Waterhouse Electric and Manufacturing Company, the American Electric Manufacturing Company, the Mount Morris Electric Light Company and the Ball Electrical Illuminating Company had appeared before the Lighting Commission and offered to make bids on condition that they could secure franchises from the city. He said that, in addition to the reasons which he had advanced in his communication of May 20, he was satisfied that the city would save a very large amount every year in the expenses of the Police Department if better public lighting should be provided. He called attention to the conditions attached to the resolution which he vetoed, and said that in the opinion of the Corporation Counsel these conditions were null and void. He referred to the fact that

the Aldermen had recently given a franchise to the East River Electric Light Company without any such conditions, and that he had promptly approved of this franchise because it gave the city one more competitor for the contract for city lighting. Upon receiving this message from the Mayor the Board of Aldermen voted to hold a special meeting three days later, on May 27, and to make the report of the majority of the Committee on Lamps and Gas a special order for consideration on that date.

On May 27 a petition was received from still another company, the North New York Lighting Company, and its name was added to the list of companies to whom it was proposed to grant a franchise. The whole matter was again referred to a committee to be taken up for final consideration on May 31, 1887. This time the full committee agreed upon a report, in which it urged the expediency of extending the lighting of the public streets by electricity as far as the means of the city would permit. The committee said:

"The superiority of electric light over gas for thorough illumination is incontestable and in view of the valuable results to be obtained there should be no hesitation on the part of those controlling the matter to the most liberal extension of its use.

"To attain this object it is necessary that there should be persons prepared to supply it, and that there should be a reasonable approximation of its cost to that of gas. The applications for our consent now before the board assure us of the possibility of an eager competition for its supply.

"The reduction in price also is within our control through the activity of that competition which it is in our power to set in motion by conceding the consents asked for.

"The business is now in the hands of three or four companies.

"It is not reasonable to expect that they will voluntarily sacrifice obtainable profits from motives of benevolence or public spirit.

"The spirit of trade is essentially selfish and the cheapness of every product has been brought about, not by self-sacrifice but by active competition of others in the same field of industry, who finding sufficient profit at lower rates, attract the consumer by reduced charges and compel their rivals in turn to resort to still further reductions in the effort to retain the public custom, which always seeks the cheapest market.

"It rests with this board to say whether this process of competition, which must result in cheap and better light to our constituents, shall take place.

"If we grant the consents asked for by companies who have applied to us the inevitable effect of our action and the consequent free competition must be such a reduction in the charges for electric lighting as will not only

make it possible for the Board of Street Lighting to carry out the request embodied in the resolution of the Vice-President, but will also bring the free use of electric lighting within the means of thousands who are now prevented by the practical monopoly of the business enjoyed by a few corporations.

"It must be remembered by those who are so anxious that this form of light shall be supplied to private consumers at a moderate cost that the patronage of the city is all important to the spread of the system. The certainty of the large customer whose patronage will at least pay the running expenses of the business offers the necessary inducement to the outlay in machinery, poles and wires, and thus makes it possible for the private consumer, before whose door the wires pass, to reach a supply which would otherwise be unobtainable, and as the private demand, stimulated by a more general use, increases, the encouragement to competition will inevitably invite business and attract other companies to the field.

"It has been claimed by some that this board should as a condition of granting its consent require that the companies should agree to supply private consumers at a rate not exceeding a fixed sum per light."

The first reason advanced by the committee for not limiting the charges was the fact that the Corporation Counsel had given an opinion adverse to the power of the aldermen to regulate rates in granting an electric light franchise. The second reason was that, as the companies had not yet commenced business, and as the rate at which they could afford to supply private consumers would depend upon the number of their customers, and as it was impossible to foresee which company would get the largest number of customers, the aldermen could not fix a limit of charge applying to all the companies alike which would be reasonable with one and not be unreasonable with another. The committee suggested that if, after the electric light business had attained greater proportions, combinations between the companies should result in an excessive or unnatural price for electric lighting, the state legislature would have the power to intervene and regulate the price. The third reason given by the committee for not fixing a maximum rate in the franchise was the fact that a franchise had just been given to the East River Electric Light Company without any such condition.

The resolution reported by the committee granting a blanket franchise was adopted May 31, 1887, and approved by the Mayor on June 13th. The companies which obtained rights under this franchise were the following:

Waterhouse Electric & Manufacturing Company.
American Electric Manufacturing Company.
The Ball Electrical Illuminating Company.
The Mount Morris Electric Light Company.
The Harlem Lighting Company.
The North New York Lighting Company.

This franchise was brief and simple in its terms. It gave the companies the right "to locate and erect poles and hang wires and fixtures thereon and to place, construct and use wires, conduits and conductors for electrical purposes in the City of New York, in, over and under the streets, avenues, wharves, piers and parks therein or adjacent thereto, according to such plans as may be directed, approved or allowed by and subject to the powers of the Electrical Subway Commissioners * * * and under the supervision of the Commissioner of Public Works and the Department of Public Parks within their respective territorial jurisdictions, and subject also to all existing ordinances applicable thereto, and to all reasonable regulations of the privilege hereby conferred which the Common Council may hereafter impose by ordinance or otherwise."

As compensation for the privilege the companies were to furnish free of charge to the city "one full arc light of power equal to the average required at the time in contracts with the city for such electric lights, for every 50 arc lights furnished by said companies to other consumers." The companies were required upon request of the Board of Street Lighting to make return under oath of the number of private arc lights furnished by them. The companies were also required to pay the city one cent per lineal foot of streets occupied for other than arc electric lights.

8. *The Mutual Franchise.*— On June 7, 1887, a few days after the granting of an electric light franchise to the six companies mentioned in the preceding section, the Board of Aldermen passed a resolution granting a franchise to the Mutual Electric Illuminating Company. This grant was substantially in the same terms as the one last described, but the conditions imposed were different. As compensation the company was to pay not less than 20 per cent of its gross receipts "and make return of the same to the Comptroller under oath monthly." The company was also to give a bond to the city in the sum of $50,000, conditioned upon

the faithful performance of the terms of the resolution and to secure the city against suits or damages for the infringements of patents. This franchise resolution was approved by the Mayor June 20, 1887. No indication has been found to show that this franchise was ever exercised by the company to which it was granted or by any one else.

9. *"Franchises" Granted by Board of Electrical Control,* 1887 *to* 1897.— It appears that no electric-light franchises were granted by the Board of Aldermen of the old City of New York after June 7, 1887. It seems to have been assumed that the right to grant such franchises passed to the Board of Electrical Control. At any rate that board in the exercise of its functions attempted to make several such grants, but the Court of Appeals, in the case of the *West Side Electric Company* v. *The Consolidated Telegraph and Electrical Subway Company,* 187 N. Y. 58, decided January 7, 1907, that the Board of Electrical Control had at no time possessed the franchise-giving authority of the City of New York, but that such authority was vested in the Common Council even during the years when the board was assuming to exercise it. It is not necessary, therefore, to describe in detail the history of the various so-called "franchises" granted by this board. The following is a list of them:

(1) Franchise granted September 20, 1887, to *The (New York) Safety Electric Light & Power Company.*
(2) Franchise granted October 19, 1888, to the "*Electric Power Company,*" H. M. Hawkesworth, President.
(3) Franchise granted February 8, 1893, to *The New York Heat, Light & Power Company.*
(4) Franchise granted November 12, 1894, to *The Block Lighting & Power Company No.* 1.
(5) Franchise granted June 7, 1895, to the *Madison Square Light Company.*
(6) Franchise granted October 29, 1896, to the *Fleischauer Electric Light & Power Company.*
(7) Franchise granted November 12, 1896, to *The West Side Electric Company.*
(8) Franchise granted December 7, 1897, to *The Metropolitan Electric Light, Heat and Power Company.*
(9) Franchise granted December 31, 1897, to the *Greater New York Electric Light and Power Company.*
(10) Franchise granted December 31, 1897, to the *Commercial Light, Heat & Power Company.*
(11) Franchise granted December 31, 1897, to the *Colonial Electric Company of New York.*
(12) Franchise granted December 31, 1897, to the *Pelham Electric Light & Power Company.*

Although no one of these franchises was valid, operation was carried on under many of them for several years. The United Electric Light and Power Company, successor by change of name to the (New York) Safety Electric Light and Power Company, operated under the "franchise" of September 20, 1887, at least until 1902. The Madison Square Light Company held the East River Electric Light Company franchise from the Board of Aldermen, as well as the grant to itself from the Board of Electrical Control. The New York Heat, Light and Power Company, the Block Lighting and Power Company No. 1, the Manhattan Lighting Company and the Borough of Manhattan Electric Company, however, had no other right to operate except the rights derived from the Board of Electrical Control. The grants to the Fleischauer Company and the West Side Electric Company were used on a small scale by those companies until 1907. The Electric Power Company's grant may have been used by that company for a time. The franchises granted to the Metropolitan Electric Light, Heat and Power Company, the Greater New York Electric Light and Power Company, the Commercial Light, Heat and Power Company, the Colonial Electric Company and the Pelham Electric Light and Power Company seem never to have been used at all. The grant to the Pelham company, however, is still claimed for what it is worth by the Westchester Lighting Company.

Twelve electric lighting franchises and the 12 grants of the Board of Electrical Control were issued originally to 23 different companies. At present there are only three companies that are operating at all, and one of these has less than a dozen consumers. It buys the small amount of current it sells from one of the other companies. The New York Edison Company has undisputed title to the original Edison franchise of 1881 and four others granted in 1887. The Edison company also holds the original franchise for a limited territory granted to the Harlem Lighting Company in 1886, but this grant is of no importance as it was practically superseded by the general grant to the same company in 1887. The United Electric Light and Power Company possesses the old United States franchise of 1881. It also controls the Brush franchise through the ownership of practically all of

the capital stock of that company. The Brush comp
dormant, all of its business being carried on by the Edison
pany. The franchise of the Ball Electrical Illuminating
pany is still held by that company, which is now dormant, h
passed under the control of the United Electric Light and P
Company, through stock ownership.

The franchise of the American Electric Manufacturing
pany is now claimed by the Long Acre Electric Light and P
Company.

The franchise of the Waterhouse Electric and Manufact
Company has been lost. The company seems never to hav
gaged in active operation to any considerable extent, and
not known that its franchise was ever transferred to any
company or person. In fact, a thorough search of the index
the Secretary of State's office has failed to show any referen
the incorporation of a company in this state under this name.

The franchise of the Mutual Electric Illuminating Comp
seems also to have been lost. Its terms were such that no
seems to have taken any practical interest in finding it.

III. Corporate History of the New York Edison Company.

The New York Edison Company is the successor, through p
chase, merger and consolidation, of fifteen or sixteen origin
electric light and power companies and one steam company,
follows:

The New York Edison Company, incorporated May 21, 1901, as a consolid
tion of

The Edison Electric Illuminating Company of New York, incorporate
December 17, 1880, which absorbed by merger

The Harlem Lighting Company, incorporated November 3, 1886, an
Manhattan Electric Light Company, incorporated September 1, 1896
as a consolidation of

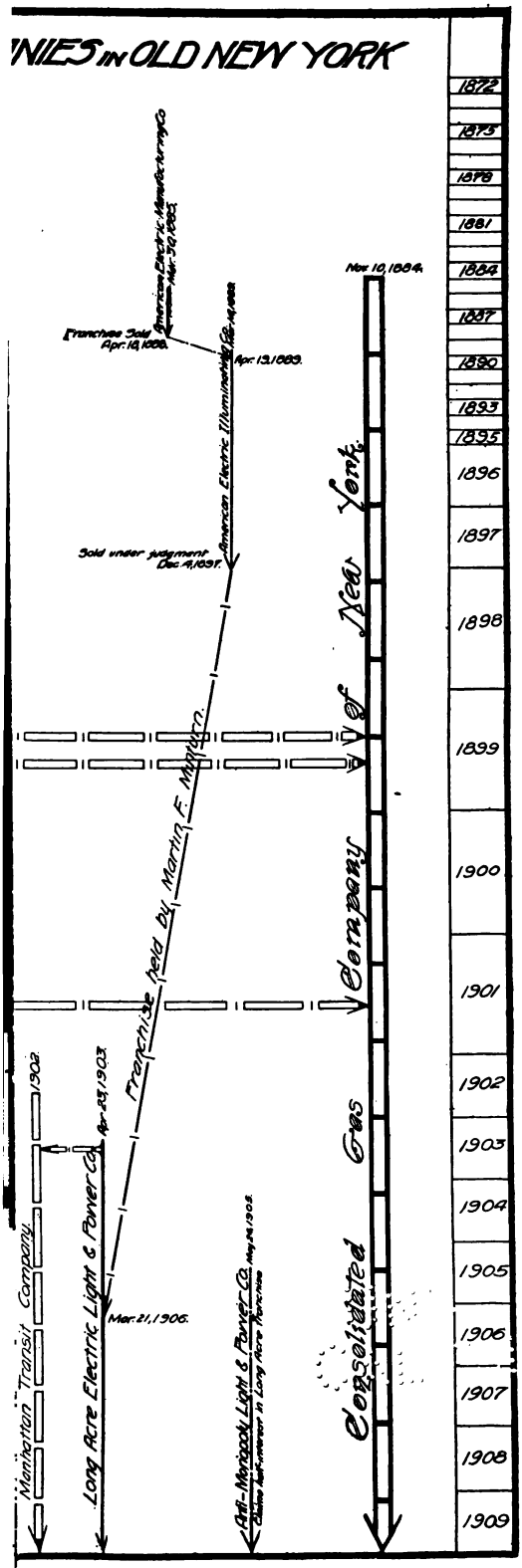
Manhattan Electric Light Company, Limited, incorporated June
30, 1888, and

Madison Square Light Company, incorporated December 3, 1894,
as a re-organization of

Thomson-Houston Electric Company (name changed March
12, 1892, from East River Electric Light Company), in-
corporated February 8, 1887, and

The New York Gas & Electric Light, Heat & Power Company, incor-
porated October 3, 1898, which on February 1, 1900, absorbed by
merger

The Mount Morris Electric Light Company, incorporated October 25,
1886;



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North River Electric Light & Power Co., incorporated December 9, 1891, as a re-organization of

The North New York Lighting Company, incorporated March 26, 1887;

The Borough of Manhattan Electric Company, incorporated September 21, 1897;

The New York Heat, Light and Power Company, incorporated February 9, 1895, as a consolidation of

The New York Heat, Light & Power Company, incorporated May 21, 1891, and said to be successor of Daft Electric Light Company, incorporated March 4, 1882, and

Excelsior Steam Power Company (steam, not electric), incorporated July 21, 1873;

Manhattan Lighting Company, incorporated December 21, 1898; and

The Block Lighting & Power Company No. 1, incorporated September 8, 1894.

The Edison Electric Illuminating Company of New York was the first electric lighting company in the city. It was incorporated December 17, 1880, for a period of 50 years under the Act of February 16, 1848, entitled "An Act to authorize the formation of gas light companies," and the various acts of the legislature adding to and amending this act. One of these amendatory acts was chapter 512 of the Laws of 1879, by which companies organized under the Gas Corporations Law were authorized to substitute electricity for gas as a means of public and commercial lighting. The Edison company placed its wires under ground from the beginning, in what are known as "Edison tubes." Its system was a low tension system. The Harlem Lighting Company, the East River Electric Light Company (name afterwards changed to Thomson-Houston Electric Company) and Manhattan Electric Light Company, Limited, were incorporated several years later for the distribution of electricity for light and power by the use of various high tension systems. About December, 1891, the Edison company got control through stock ownership of the Harlem company and the Manhattan company, which were already under common control, and about December, 1894, it also got control of the Madison Square Light Company, which had succeeded to the property and franchises of the Thomson-Houston Electric Company. On September 1, 1896, the Manhattan company and the Madison Square company were consolidated to form the Manhattan Electric Light Company. The systems of the Harlem company, the Manhattan company and the Madison Square company were practically operated by the Edison com-

pany, although the companies were not actually merged into the Edison company until March 1, 1900. Furthermore, the high-tension systems of these subsidiary companies had necessarily been kept separate in operation from the Edison company's own low-tension system.

The New York Gas and Electric Light, Heat and Power Company, which was popularly known as "The Power Company," was incorporated October 3, 1898. Almost immediately this company acquired the entire capital stock of the six companies which were later absorbed by it through merger. It also acquired a controlling interest in the stock of the Edison Electric Illuminating Company of New York. In December, 1899, a little more than a year after its incorporation, the Power company itself passed under the control of the Consolidated Gas Company of New York, through majority stock ownership by the latter company. The companies forming the Power company's system all used high tension wires, but after January 1, 1899, their operations and the operations of the companies in the Edison system were subject to common control.

Finally, on May 21, 1901, the Edison Electric Illuminating Company of New York and the New York Gas and Electric Light, Heat and Power Company were consolidated to form the New York Edison Company.

When the city adopted the general plan for electrical subways in 1886 and entered into contract with the Consolidated Telegraph and Electrical Subway Company for their construction, the Edison Electric Illuminating Company was in a different position from that of any other company having wires in the streets. It had placed its wires under ground from the beginning. After the electrical subway contracts had been executed the Consolidated Telegraph and Electrical Subway Company assumed the duty of constructing for the Edison company the special ducts required for its low tension lighting wires. It seems that the actual construction of the electrical subways was performed for the Subway company by the Phoenix Construction Company under contracts. Although the construction of the Edison tubes was a part of the duty of the Subway company, the Edison company preferred to keep this work under its own control. Accordingly, the Edison Light and Power Installation Company was incorporated Feb-

ruary 7, 1887, with all of its stock held by the Edison Electric Illuminating Company, and from that time on the Edison ducts were built by the Edison Light and Power Installation Company as sub-contractors for the Phoenix Construction Company, until the separation of the high tension from the low tension ducts four years later. The Empire City Subway Company, Limited, having been incorporated in 1890 to take over the systems of low-tension ducts from the Consolidated Telegraph and Electrical Subway Company and contracts providing for the division of the business having been executed in 1891, the Edison Light and Power Installation Company entered into an agreement with the Empire City Subway Company, Limited, under which the former secured the right to lay the Edison tubes as the agents of the latter. The first agreement between these companies was dated July 1, 1892, and the business relations between the two companies and between the Edison Light and Power Installation Company and the New York Edison Company remain substantially the same to the present time. In other words, the New York Edison Company, through its subsidiary, the Edison Light and Power Installation Company, builds the low-tension ducts for its own use, but builds them under contract with and as agent of the Empire City Subway Company, Limited, which has the exclusive right and duty under its contract with the city to construct and maintain all low-tension electrical subways.

Through its amalgamation with other electric light and power companies using high tension systems, the old Edison company necessarily again came into relations with the Consolidated Telegraph and Electrical Subway Company, even after the high-tension and low-tension systems of conduits had been separated. As a part of the general process of consolidation carried through by the New York Gas and Electric Light, Heat and Power Company in 1898, the latter company acquired a majority of the capital stock of the Consolidated Telegraph and Electrical Subway Company at about the same time that it also acquired a majority of the capital stock of the old Edison company. Accordingly, when the New York Edison Company was formed in 1901 it inherited from "The Power Company" the control of the Consolidated Telegraph and Electrical Subway Company. This control it still retains.

The control of the whole aggregation of electric light and power companies passed to the Consolidated Gas Company in December, 1899, when that company secured a majority of the capital stock of The Power Company. At the formation of the New York Edison Company in 1901 all but a few of its shares were taken by the Consolidated Gas Company, which still retains them.

In order to make clear the historical development of the various electric light companies in old New York, the accompanying chart, entitled "Corporate History of Electric Light and Power Companies in Old New York," has been prepared. This chart shows the dates of incorporation, change of name, foreclosure, sale, lease, merger, acquisition of stock and consolidation of the various companies. (*See* chart opposite page 44.)

IV. Existing Rights and Obligations of Edison Company.

The five franchises to which the New York Edison Company has undisputed title and which were obtained by the various mergers, purchases and consolidations above described are:

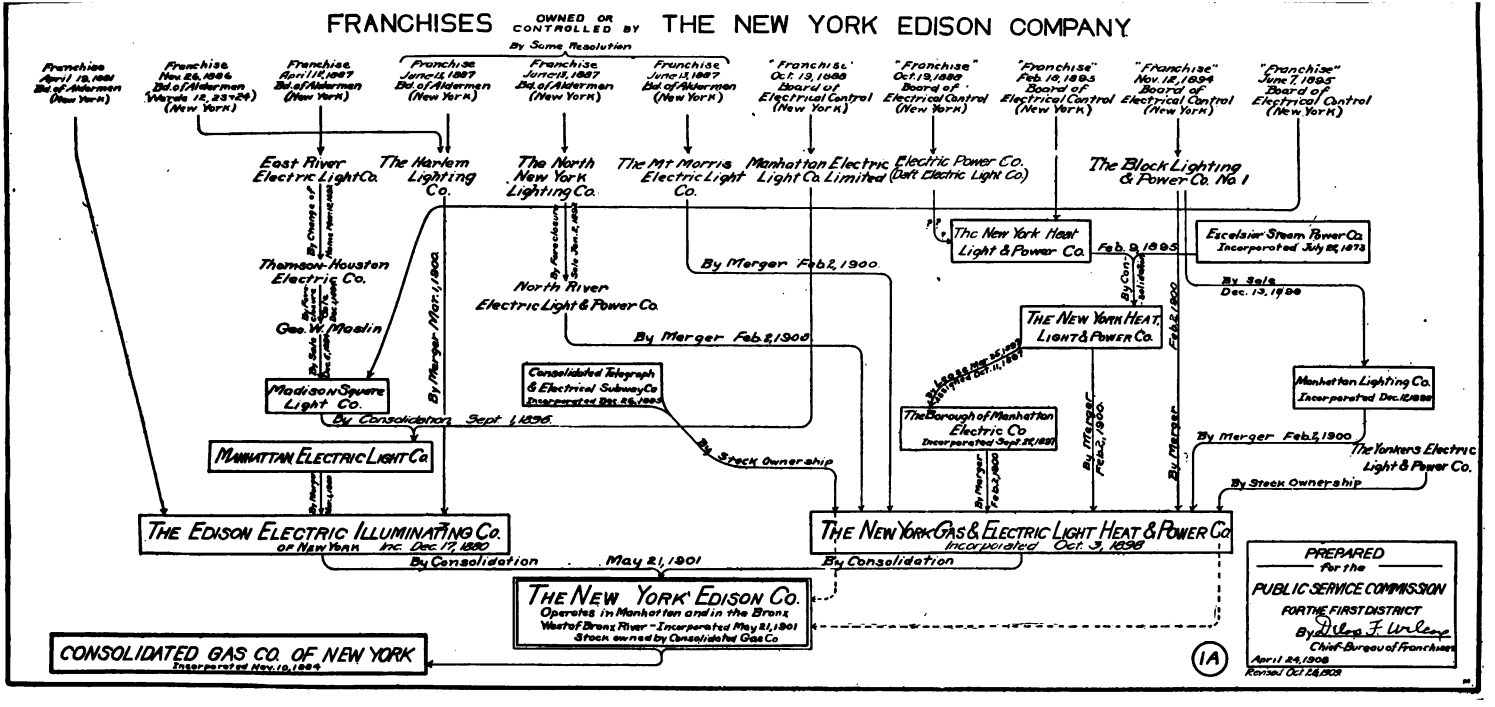
(1) Franchise granted April 19, 1881, to The Edison Electric Illuminating Company of New York.
(2) Franchise granted April 1, 1887, to the East River Electric Light Company.
(3) Franchise granted, June 13, 1887, to The Harlem Lighting Company.
(4) Franchise granted, June 13, 1887, to The North New York Lighting Company.
(5) Franchise granted, June 13, 1887, to The Mount Morris Electric Light Company.

The predecessors of the New York Edison Company also received the following grants from the Board of Electrical Control:

(6) "Franchise" granted October 19, 1888, to Manhattan Electric Light Company, Limited.
(7) "Franchise" granted February 8, 1893, to The New York Heat, Light & Power Company.
(8) "Franchise" granted November 12, 1894, to The Block Lighting & Power Company No. 1.
(9) "Franchise" granted June 7, 1895, to the Madison Square Light Company.

The process by which the franchises and grants came into the possession of the present company is shown by the accompanying chart, entitled "Franchises owned or controlled by the New York Edison Company."

FRANCHISES OWNED OR CONTROLLED BY THE NEW YORK EDISON COMPANY



As all of the franchises granted by the Board of Electrical Control were invalid, as afterwards determined by the Court of Appeals, it follows that all the electric light and power mains laid under these franchises were laid without authority. According to the testimony of Mr. J. W. Lieb, Jr., vice-president of the New York Edison Company, it is impossible at the present time to differentiate in detail the existing mains of the company which were originally laid under these illegal franchises. All of the low-tension mains of the Edison Electric Illuminating Company of New York were laid under the aldermanic franchise of April 19, 1881. The Harlem Lighting Company and the East River Electric Light Company (Thomson-Houston Electric Company) each had a valid franchise. The Madison Square Light Company which succeeded to the rights of the Thomson-Houston Electric Company, also had a valid franchise, as well as an invalid one. The only company in the original Edison group that depended for its rights upon a franchise granted by the Board of Electrical Control was the Manhattan Electric Light Company, Limited. This company was incorporated June 30, 1888, and was not consolidated with the Madison Square Light Company until September 1, 1896. It appears, therefore, that all the mains laid by the Manhattan Electric Light Company, Limited, between 1888 and 1896 were laid without proper authority. Mr. Lieb testified that the New York Edison Company could not furnish any maps or other information showing the location of these original mains.

Of the companies that came into the New York Edison Company through the New York Gas and Electric Light, Heat and Power Company two had valid franchises. These were the Mount Morris Electric Light Company and the North River Electric Light and Power Company, successor of the North New York Lighting Company. The Block Lighting and Power Company No. 1 and the New York Heat, Light and Power Company were entirely dependent for their rights upon invalid franchises from the Board of Electrical Control. The Borough of Manhattan Electric Company had no franchises of its own, but succeeded to the rights of the New York Heat, Light and Power Company through lease in 1897. The Manhattan Lighting Company also

had no rights of its own, but succeeded to the rights of the Block Lighting and Power Company No. 1, by purchase in 1898. It appears, therefore, that the only mains lawfully laid by the constituent companies of the Power Company's system were laid by the Mount Morris Electric Light Company and the North New York Lighting Company or its successor, the North River Electric Light and Power Company, or by the Power Company itself after February 1, 1900, when it succeeded to the franchises of its constituent companies by merger.

The mains laid and the areas supplied by the various companies are set forth in detail in Exhibit III, so far as the data in the files of the Commission will permit. It is probable, therefore, that at the most not more than 50 miles or 5 per cent of Edison underground circuits now in operation could be traced to the activities of the old companies operating under the invalid "franchises" granted by the Board of Electrical Control.

Certain very interesting questions arise, however, in regard to the terms and conditions of the several franchises under which the New York Edison Company may now claim to be operating. The attention of Mr. Hemmens, counsel for the company, was called to the fact that the original Edison franchise of 1881 authorized the company to supply electrical current "for purposes of *illumination.*" The most interesting portion of his testimony is as follows (p. 1476 of record):

"Q. The Edison franchise, that is, the franchise granted in 1881, was for illumination only, was it not? A. For the purposes of illumination.

"Q. Under that you haven't any right to supply current for power? A. Well, I think we have.

"Q. Can you refer us to the section? A. Well, only from a broad reasoning, that is all. The franchise was an electric franchise granted for the purpose of conveying, using or supplying electrical current for purposes of illumination, and the other purposes for which electricity is used are incidental. We would have the right even, with the wording of this franchise, to sell current for other purposes besides that for lighting; incidental purposes. It is something that has grown since then. There was not much power used at that time; there was not any. No electricity was used except for lighting purposes; practically the same as the gas question. I do not suppose gas was used for heating or cooking when the franchises were first granted."

It is to be noted that if the original Edison franchise were to be interpreted as authorizing the sale of electricity for illumination *only,* none of the mains laid by the old Edison company prior to March 1, 1900, could be used for the distribution of current for heating or power. Prior to that date the Edison company had in operation 302 miles of electrical circuits, some of which were high-tension circuits. Mr. Hemmens stated that the use of electricity for heat and power came up after the original Edison franchise was granted, and Mr. Lieb testified that power was served from the Edison station long before 1887. He thought that the current was supplied for power as early as 1883 or 1884, as soon as motors were invented for its use.

If the original Edison franchise could not be used in connection with the supply of electricity for heat and power, it would be necessary for the company to operate practically all its lines under the four later franchises which it has inherited from other companies. All of these franchises, however, provide for compensation to the city. They provide that the company shall furnish to the city free of charge one street arc light for every 50 arc lights furnished to private consumers. Mr. Lieb testified that the New York Edison Company is still supplying a certain number of free arc lights to the city, representing admitted obligations of the various constituent companies at the time when they were merged or consolidated. He introduced a copy of the sworn statement which is filed regularly every month with the city bills, showing that the New York Edison Company, as successor of the Manhattan Electric Light Company, the Harlem Lighting Company and the Mount Morris Electric Light Company, supplied a certain number of arc lights, "properly included within the terms" of the franchise to private consumers, and that, under the conditions imposed upon its predecessor companies in this resolution, the New York Edison Company was furnishing 23 free lights located at certain specified points. While he supposed that the obligation to furnish these lights had ceased, as a matter of fact the New York Edison Company continued to furnish them. He argued at considerable length that the free lighting provisions of the franchises were no longer applicable, but the gist of his remarks is in the following sentences: "There has been a change

in the state of the art", said he. "We do not practically furnish arc lights any more. *The consumer furnishes his own arc light.* * * * We simply furnish current; we do not furnish the arc lights specifically, or the incandescent. We furnish the customer with so much current. He does with it what he pleases, or uses incandescent lamps, or whatever arc lamps of whatever power he wishes; that is something beyond our control." When asked if he did not think that the Common Council originally intended to provide that for every 50 arc lamps to which current was supplied by the company one lamp should be supplied with current for street lighting free, Mr. Lieb said (page 1483): "Under the conditions that they were doing their business then, and supplying current then, yes, sir; but not as it is done now, because you might have a thousand lamps now and not produce a penny of income under the meter arc-light system, and it would not be practicable for the company to supply a lamp free for every fifty lamps, when it had no income on them. That is the difference which the state of the art has brought about." The following questions and answers illustrate the company's point of view as shown by Mr. Lieb's testimony:

"Q. Now it gets paid for the current? A. Yes, but we do not put it out for arc lighting. We do not know what it is for. There is no separation; whether it is for arc lighting or not.

"Q. That is true enough, but it would be possible to determine approximately how many arc lights were in use, and, if your interpretation is right, does it not all resolve itself into this: That the Company, by the change in its method of dealing with arc lamps, has rendered a provision of the franchise of no effect? A. Not the Company, but the state of the art."

It is important to note that the city has never, according to the knowledge of Mr. Lieb, made a demand upon the New York Edison Company for free lighting as provided for by certain of its franchises.

All of the New York Edison Company's franchises, including the original one, provide that the company shall pay one cent per lineal foot of streets opened for underground work. There is an exception in the four later franchises, however, in case the streets are opened for the laying of mains to supply arc lights. This provision has become obsolete because all of the underground

conduits, including the ducts for the service wires, are laid by the electrical subway companies or their agents. In other words the New York Edison Company never opens the pavements and consequently is under no obligation to pay the city the one cent per lineal foot for which provision was made in the franchises.

All of the valid franchises held by the New York Edison Company were granted by the Board of Aldermen prior to the time when that portion of The Bronx east of the Bronx river, known as the annexed district, was brought into the city. During the investigation the question arose as to whether at the time of the annexation of new territory to the city in 1895 the franchises granted by the city prior to that time automatically extended to include the annexed territory. The practical question is: Does the New York Edison Company have franchise rights for the distribution of electricity in the annexed district? The company's counsel, Mr. Hemmens, answered this question in the affirmative. He based this claim on the principle that the addition of territory to the city in 1895, *ipso facto,* gave the company the right to supply in that territory, and also "on decisions of the courts" and "the statutes under which the annexation took place." He stated that "the statutes contain the provision which we claim gives us the right, in addition to the decisions of the courts in various states and the general principle of law." He did not cite, however, any specific authorities on this point. It should be noted here that whatever may have been the effect of the annexation of new territory in 1895 upon existing franchise rights, there was a specific provision in the later act providing for the consolidation of various districts with old New York to form Greater New York, to the effect that franchise rights should not be territorially extended by that consolidation. Accordingly, even if the company's theory that the "franchise follows the flag" is correct, the company does not claim that it has any franchise rights in Brooklyn, Queens and Richmond.

A condensed analysis of the provisions of the existing valid franchises of the New York Edison Company is given in Table I.

TABLE I.

ANALYSIS OF ELECTRIC LIGHT FRANCHISES HELD BY THE NEW YORK EDISON CO.*

Territory covered: Manhattan, and The Bronx west of Bronx River.
Area: 26,355 acres; 41.4 square miles. Population in 1910 — 2,713,369.

Original grantee.....	Edison Electric Illuminating Co. of New York.	East River Electric Light Co.	Harlem Lighting Co., North New York Lighting Co. and Mt. Morris Electric Light Co.
Local authority.....	Board of aldermen...	Board of aldermen..	Board of aldermen.
Date of franchise.....	First passed March 22, 1881. Passed over veto, April 19, 1881.	Passed March 29, 1887.	Passed May 31, 1887.
Action by mayor.....	Vetoed April 5, 1881.	Approved April 1, 1887.	Approved June 13, 1887.
Scope of franchise.....	Purposes of illumination	Electrical purposes..	Electrical purposes.
Compensation in money	One cent per lineal foot of streets opened for underground work.	One cent per lineal foot of streets opened for other than arc lights.	One cent per lineal foot of streets opened for other than arc lights.
Free lighting.....	.....	One street arc light for every fifty arc lights furnished to private consumers.	One street arc light for every fifty arc lights furnished to private consumers.
Right to regulate service reserved.	.....	Right of "reasonable regulation" reserved to Common Council.	Right of "reasonable regulation" reserved to Common Council.
Publicity of accounts...	.....	Sworn statement required of number of private arc lights furnished.	Sworn statement required of number of private arc lights furnished.
Wires.....	.....	Subject to electrical subway commissioners.	Subject to electrical subway commissioners.
Underground construction required.	.....	Subject to chapter 499, Laws of 1885.	Subject to chapter 499, Laws of 1885.
Excavations in streets..	Sewers, water pipes, gas pipes, etc., not to be damaged.	Subject to electrical subway commissioners.	Subject to electrical subway commissioners.
Right to inspect and supervise work.	Under direction of Commissioner of Public Works.	Reserved to Commissioner of Public Works and Department of Public Parks in their respective jurisdictions.	Reserved to Commissioner of Public Works and Department of Public Parks in their respective jurisdictions.
Grant exclusive.....	.....	.....	No.
Grantee's "successors or assigns" recognized in franchise.	No.....	Yes.....	No.
Number of times franchise has been transferred.	One.....	Five.....	Two; three; two.

*All these franchises are without time limit.

V. Corporate History of the United Electric Light and Power Company.

The United States Illuminating Company was incorporated February 4, 1881, for a period of 50 years, under the Act of 1848 to authorize the formation of gas-light companies, and its amendments. The company operated independently under its franchise for a number of years.

The Brush Electric Illuminating Company of New York, which received a franchise at the same time as the United States company, was incorporated February 19, 1881, for a period of 50 years, under the Manufacturing Corporations Law of 1848 and its amendments. This company also operated independently for a number of years.

The Ball Electrical Illuminating Company was incorporated March 25, 1886, under the General Manufacturing Corporations Law of 1848. Mr. Frank W. Smith, Secretary of the United Company, testified that he did not think that the Ball Company had operated since 1888 or 1889, and that it operated only to a very small extent at any time.

The Safety Electric Light and Power Company was incorporated February 4, 1887, under the General Manufacturing Corporations Law of 1848, its name being afterwards changed, December 9, 1889, to the United Electric Light and Power Company. The objects for which the company was formed were described in its certificate of incorporation as follows: "The manufacturing of electricity for the purposes for which electricity is now or may hereafter be used, useful or utilized, including all lawful right to manufacture and use electricity for producing light, heat or power as contemplated by the act, chapter 73 of the Laws of 1882, passed April 17, 1882, entitled 'An Act to amend chapter 512 of the Laws of 1879, entitled "An Act to authorize gas light companies to use electricity instead of gas for the lighting of streets, public places and public and private buildings in cities, villages and towns within this state."'" This company received no franchise from the Board of Aldermen, but operated under rights granted by the Board of Electrical Control.

It appears from Mr. Smith's testimony that this company first became interested through stock holdings in the United States Illuminating Company, the Brush Electric Illuminating Com-

pany of New York and the Ball Electrical Illuminating Company of New York, in 1890, and had acquired a controlling interest in the Brush and Ball Companies by 1892 and in the United States Company by 1895. On June 12, 1902, the United Electric Light and Power Company absorbed by merger the United States Illuminating Company, but, according to Mr. Smith's testimony, the United States Company had not been operating since 1889 or 1890, when the overhead poles and wires were removed from the streets by the city authorities. In the meantime the company had maintained stations but no distributing system. The Brush and Ball Companies, however, remain as subsidiary controlled companies. Both of them are dormant. The United Electric Light and Power Company owns only a little over half of the stock of the Ball Company. This fact prevents, it is stated, the merger of the Ball Company by the United Company. The Ball Company has no property except its franchise, and no receipts. The minority of its stock is held by individuals, who seem to consider the stock worth "a lot of money," and, according to Mr. Hemmens's testimony, "will not sell it at a reasonable price."

There is also a minority of the stock of the Brush Company which is not owned by the United Company, but this minority constitutes only a few shares. It should be stated, however, that the Brush Company, although it was under the control of the United Electric Light and Power Company, entered into an operating agreement, June 25, 1900, with the Edison Electric Illuminating Company, by which the latter was to operate the Brush plant and serve the Brush customers, paying to the Brush Company a certain percentage of the gross receipts from the business. This operating agreement was renewed with the New York Edison Company May 2, 1904, on a different basis, the Edison Company agreeing to pay the Brush Company an annual rental of $86,940, which was reduced in 1905 to $47,656. It does not appear from the testimony that the New York Edison Company is now getting any substantial benefit in return for the rental it pays to the Brush Company. The New York Edison Company gets no additional franchise rights and all of the Brush property, except possibly a few cables and fixtures, has disappeared. With reference to the value of this contract to the Edison Company Mr. Lieb testified (page 1494):

"Q. Well, as a matter of fact, the Edison Company now is getting practically no return from the Brush Company for the $47,000 rental. A. Except it has the business; use of its business, and taking the business, and its customers were all transferred to us. They turned over to us all of their business and let us transact their business instead of their doing it themselves; they turned over to us all the profits and turned over to us—practically, went out of business as far as supplying current is concerned, and turned it over to us. * * *

"Q. That is what it comes down to; you are paying them $47,000—A. (Interrupting) For their business."

Mr. Smith testified that the Brush Company still owns a building which was originally occupied by it as a generating station, but that it has no mains in the street. He said, however, that the company has "some few old lamps and posts in the street." In regard to the operating agreement with the Edison Company, he testified as follows:

"As Mr. Lieb said, the company's business was gradually disappearing, and they made an operating agreement in 1900 with the Edison Company, whereby it operated the Brush Company's plant which at that time it owned, and which was in existence, and as the business fell off and fell off, the Edison Company could not afford to operate the plant on any such basis as the original agreement provided for, or, in fact, on any basis. Subsequently, I think, in 1904, a new operating agreement was made with the Edison Company, under which they took over the business of the Brush Company. The old plant, machinery, etc., were sold for junk. It had no value other than junk. The cables which were in the ducts, which were old cables, and which were of fibre, insulated, were useless and withdrawn, and they were sold as junk, and the existing operating agreement, of which I think the Commission has a copy, is in vogue now."

As to the value of the agreement, he testified:

"This lease with the Edison Company serves to pay all obligations of the Brush Company and meet its fixed charges. It was gradually losing its business and it had no money to invest in a plant, and it was losing its business to the Edison Company, and, as a matter of fact it was a very advantageous agreement for the Edison Company to make."

It appears, therefore, that the United Electric Light and Power Company holds through merger the property and franchises of the United States Illuminating Company; controls through ownership of the majority of its capital stock the Ball Electrical Illuminating Company, and also through majority stock ownership controls the Brush Electric Illuminating Company of New York, subject to the interests of the Consolidated Gas Company of New York through the ownership by the latter company of the Brush Company's outstanding bonds, and also subject to

the operating agreement with the New York Edison Company, under which the Brush business is carried on by the latter company for an annual rental. Mr. Smith testified that the Brush Company had $1,000,000 of capital stock and $250,000 of bonds outstanding. The bonds are all held by the Consolidated Gas Company. The stock of the United Electric Light and Power Company is also held by the Consolidated Gas Company, having been acquired by the latter about 1899.

VI. Existing Rights and Obligations of the United Company.

The United Electric Light and Power Company now owns or controls the following franchises:

(1) Franchise granted May 3, 1881, to the United States Illuminating Company, and acquired when the United States Illuminating Company was absorbed by merger, June 12, 1902.

(2) Franchise granted May 3, 1881, to the Brush Electric Illuminating Company of New York. It is controlled by the United Company through stock ownership.

(3) Franchise granted June 13, 1887, to the Ball Electrical Illuminating Company of New York. The latter is controlled by the ownership of a bare majority of its capital stock by the United Company.

(4) "Franchise" granted September 20, 1887, by the Board of Electrical Control to the Safety Electric Light and Power Company, the original name under which the United Electric Light and Power Company was incorporated.

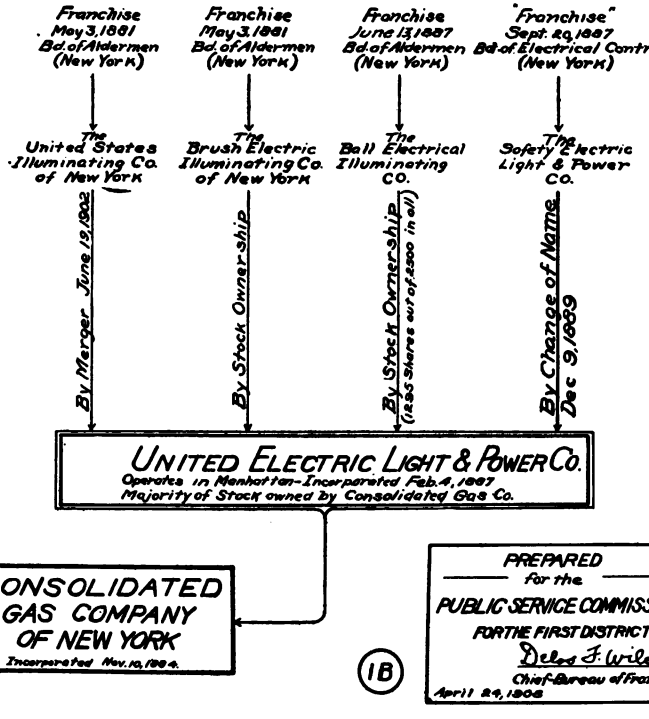
It appears, therefore, that the United Electric Light and Power Company owned no valid franchise until June 12, 1902, and that the only franchise under which it is now entitled to operate is the one acquired on that date from the United States Illuminating Company.

From a table submitted by the company, it appears that in the year 1901, which was the last year prior to the absorption of the United States Illuminating Company, 183 miles of the ducts of the Consolidated Telegraph and Electrical Subway Company were occupied or held under rental by the United Electric Light and Power Company. From this exhibit it would appear that the United States Illuminating Company had, in 1892, held 59 miles of ducts under rental, and that this mileage had gradually diminished until it disappeared entirely in 1900. The Brush Electric Illuminating Company had held 14 miles of ducts in 1892, but its holdings also had gradually diminished until they disappeared entirely in the year 1900. For the year 1908 the United Electric

FRANCHISES

OWNED OR CONTROLLED BY

UNITED ELECTRIC LIGHT AND POWER CO.



(1B)

PREPARED
for the
PUBLIC SERVICE COMMISSION
FOR THE FIRST DISTRICT
Delos F. Wilcox
Chief Bureau of Franchises
April 24, 1908

Light and Power Company paid the Consolidated Telegraph and Electrical Subway Company for the use of approximately 281 miles of ducts. Accordingly it appears that while the United Electric Light and Power Company was operating 281 miles of circuits, it had constructed prior to 1902 about 183 miles without any valid franchise. Assuming that none of the old lines had been removed, we should conclude that only 35 per cent of the company's mains in operation in 1909 were laid under valid franchises.

In regard to the scope of this company's franchise, it should be noted that the original grant to the United States Illuminating Company authorized the company to distribute electricity "for purposes of illumination." It appears, therefore, that the right of the United Electric Light and Power Company to supply electrical current for heat and power is dependent upon a liberal construction of its franchise. If the company, however, should secure actual title to the franchises of the Brush and Ball Companies it would have unquestioned right to supply electricity for all purposes, as there was no limitation in either of these franchises of the purposes for which current could be distributed.

Neither the United States franchise, nor the Brush franchise, provides for the furnishing of free lights. Both provide, however, for the payment of one cent per lineal foot of the streets opened by the company, but in practice this company, the same as the New York Edison Company, escapes the necessity of making this payment by reason of the fact that all its wires are in conduits constructed by the subway company. All of the United Company's lines are high tension alternating current lines and are in the high tension subways owned by the Consolidated Telegraph and Electrical Subway Company.

Although the company's franchise and the franchises it controls were granted prior to the annexation of the annexed district to the City of New York the company makes the same claim as the New York Edison Company, namely, that with the annexation of this territory in 1895 the company's rights under its franchises extended automatically to cover the additional area brought into the city.

For a graphical history of the company's franchises the accompanying chart entitled "Franchises owned or controlled by United Electric Light and Power Co.," has been prepared. Table II gives

a condensed summary of the provisions of these franchises and also of the one franchise of the Long Acre Electric Light and Power Company.

TABLE II.

ANALYSIS OF ELECTRIC LIGHT FRANCHISES

HELD BY

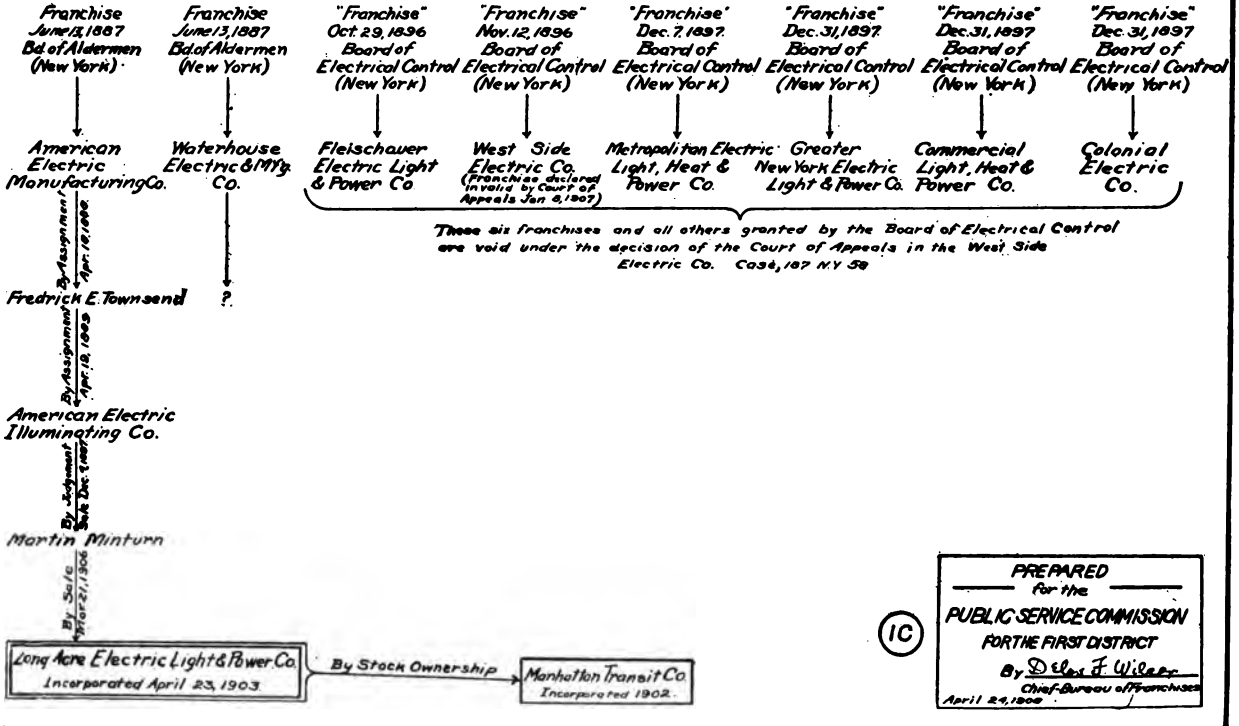
THE UNITED ELECTRIC LIGHT & POWER CO. AND THE LONG ACRE ELECTRIC LIGHT AND POWER CO.*

Territory covered: Manhattan, and The Bronx west of Bronx River.
Area: 26,355 acres; 41.4 square miles. Population in 1910,——2,713,369.

Original grantee.....	United States Illuminating Co. of New York.	Brush Electric Illuminating Co. of New York.	Ball Electrical Illuminating Co.	American Electric Manufacturing Co.
Local authority.....	Board of aldermen..	Board of aldermen..	Board of aldermen..	Board of aldermen.
Date of franchise.....	First passed April 12, 1881. Passed over veto, May 3, 1881.	*First passed April 12, 1881. Passed over veto May 3, 1881.	Passed May 31, 1887.	Passed May 31, 1887.
Action by mayor.....	Vetoed April 19, 1881.	Vetoed April 19, 1881.	Approved June 13, 1887.	Approved June 13, 1887.
Scope of franchise.....	Purposes of illumination.	Electricity.....	Electrical purposes..	Electrical purposes.
Compensation in money	One cent per lineal foot of streets opened for underground work.	One cent per lineal foot of streets opened for underground work.	One cent per lineal foot of streets opened for other than arc lights.	One cent per lineal foot of streets opened for other than arc lights.
Free lighting.....	.....	.....	One street arc light for every fifty arc lights furnished to private consumers.	One street arc light for every fifty arc lights furnished to private consumers.
Right to regulate service reserved.	.....	.....	Right of "reasonable regulations" reserved to Common Council.	Right of "reasonable regulations" reserved to Common Council.
Publicity of accounts....	.....	.....	Sworn statement required of number of private arc lights furnished.	Sworn statement required of number of private arc lights furnished.
Wires..	.....	.....	Subject to electrical subway commissioners.	Subject to electrical subway commissioners.
Underground construction required.	.....	.....	Subject to Chapter 499, Laws of 1885	Subject to Chapter 499, Laws of 1885.
Excavations in the streets	Sewers, water pipes, gas pipes, etc., not to be damaged.	Sewers, water pipes, gas pipes, etc., not to be damaged.	Subject to electrical subway commissioners.	Subject to electrical subway commissioners.
Right to inspect and supervise street work.	Under direction of Commissioner of Public Works.	Under direction of Commissioner of Public Works.	Reserved to Comissioner of Public Works and Department of Public Parks in their respective jurisdictions.	Reserved to Comissioner of Public Works and Department of Public Parks in their respective jurisdictions.
Grant exclusive.....	.....	.....	No	No.
Grantee's "successors or assigns" recognized in franchise.	No.....	No.....	No.....	No.
Number of times franchise has been transferred.	One.....	One.....	One.....	Four.

* All these franchises are without time limit.

FRANCHISE OF THE LONG ACRE ELECTRIC LIGHT AND POWER COMPANY AND VARIOUS UNUSED FRANCHISES-MANHATTAN AND BRONX



VII. The Long Acre Electric Light and Power Company.

Reference has already been made to an omnibus electric light franchise granted by the Board of Aldermen, May 31, 1887. One of the companies which obtained rights under this franchise was the American Electric Manufacturing Company. This company was incorporated March 28, 1885, under the General Manufacturing Corporations Law of 1848. On April 18, 1888, this company, by Edward H. Goff, president, and H. C. Adams, secretary, transferred its franchise to Frederick E. Townsend, in consideration of the payment of $1, and on April 19, 1889, Townsend transferred the grant to the American Electric Illuminating Company for the same consideration. This company had been incorporated March 24, 1889, under the General Manufacturing Corporations Law of 1848. One of the three directors of this company for its first year was Frederick E. Townsend. On November 8, 1897, a judgment was issued by the Supreme Court in Queens County against the American Electric Iluminating Company in favor of Francis Dalton, and on November 26, 1897, the court directed the company's receiver to sell its franchises to the highest bidder at public auction. Under this authority, the franchise was sold December 4, 1897, to Martin Minturn for the sum of $100. Minturn transferred the franchise on March 21, 1906, to the Long Acre Electric Light and Power Company for the sum of $1 and various other considerations. The various transfers of this franchise are shown graphically on the accompanying chart, entitled "Franchise of the Long Acre Electric Light and Power Company and Various Unused Franchises — Manhattan and The Bronx."

The Long Acre Electric Light and Power Company was incorporated April 23, 1903, under Article VI of the Transportation Corporations Law. It constructed a small plant in the basement of a building owned by the Manhattan Transit Company on Second Avenue near 47th Street, and in 1908 commenced to supply current to a few consumers in the immediate vicinity. According to testimony given on an application before the Commission, the American Electric Illuminating Company prior to 1890 operated a small plant on East 25th Street near Avenue A. It was asserted that operation was carried on at this point for about three years, commencing in the spring of 1887. These assertions have been disputed and the matter is still pending before the Commission.

The Long Acre franchise is identical in its terms and conditions with three of the franchises held by the New York Edison Company and the franchise of the Ball Electrical Illuminating Company. It requires the payment of one cent per lineal foot of streets opened for other than arc lighting circuits and the furnishing free to the city of one street arc light for every 50 arc lights furnished to private consumers. The franchise is without time limit, and covers the same area that is covered by the franchises owned and controlled by the New York Edison Company and the United Electric Light and Power Company. When asked if, in his opinion, this franchise gave the right to supply electric current east of the Bronx River, the company's representative replied that he feared the franchise gave no such authority.

VIII. Franchise of Bronx Gas and Electric Company.

Thus far the franchises considered have related to the Borough of Manhattan and that portion of the Borough of The Bronx located west of the Bronx river,— the City of New York as it was prior to June 6, 1895. In the area east of the Bronx river, franchises were granted by several towns and villages before annexation, of which the town of Westchester covered the largest area. The Bronx Gas and Electric Company is the sole operating company for both gas and electricity in this "town" except that portion of the town included in the limits of the former village of Williamsbridge, where the Westchester Lighting Company operates. A franchise for this district was granted by resolution of the Town Board of Westchester on September 11, 1893, and was also granted on the same date by the Highway Commissioners of the town of Westchester. This franchise authorized the Bronx Gas and Electric Company (incorporated under the Transportation Corporations Law on September 5, 1893) "to lay, erect and construct suitable wires or other conductors with the necessary poles, pipes or other fixtures in, on, over and under the streets, avenues, public parks and places of said town for conducting and distributing electricity in the manner and under the regulations hereby prescribed, to wit: All openings of the streets, avenues, public parks and places shall be made and done at reasonable times and hours, and with as little obstruction to

travel as may be, and shall be as speedily as possible completed, and all lights, lamps, poles, supports, wires, conductors, pipes or other fixtures shall be kept and maintained in good and safe condition, and promptly repaired when necessary." Under the resolution of the Town Board notice for repair might be given by the town or any of its officers; under the resolution adopted by the Commissioners of Highways notice for repairs was to be given by the commissioners. Under both resolutions specific consent was given to the Bronx Gas and Electric Company to exercise all the powers set forth in section 61 of Article VI of the Transportation Corporations Law.

The Bronx Gas and Electric Company continues to be the sole operating company in its territory, with the exception that in the portion of Pelham Bay Park south of the Hutchinson River electric lights are being supplied for the Park Department by the Westchester Lighting Company. In its territory the Bronx Gas and Electric Company is the only company having franchise rights for the supply of electricity, unless it should be held that the franchises of the New York Edison Company and the United Electric Light and Power Company and its subsidiaries were extended to cover the annexed district by virtue of the enlargement of the city's territorial limits in 1895, as claimed by these companies. This claim is not admitted by the Bronx Gas and Electric Company. There seems to be no doubt that the Bronx Company's original franchise, granted by the Town Board and the Commissioners of Highways of the town of Westchester, September 11, 1893, is valid. The analysis of this company's principal franchise will be found with the analysis of the franchises of the Westchester Lighting Company.*

IX. Other Bronx Franchises.

The area within Greater New York now supplied by the Westchester Lighting Company comprises the old village of Williamsbridge in the town of Westchester and the parts of the towns of Eastchester and Pelham which were annexed to New York City in 1895, including the villages of South Mount Vernon (or Wakefield) and Eastchester.

*Table III, p. 72, *post.*

1. *Williamsbridge Franchises.*— On December 23, 1891, the village trustees of the village of Williamsbridge (see introductory map) granted to the Eastchester Electric Company, through A. H. Gerard, agent, authority "to construct, lay and erect in all the streets, avenues, public parks and places of this village suitable wires and other conductors, with the necessary poles, pipes or other fixtures in, on, over and under streets, avenues, public parks and places of this village for conducting and distributing electricity, together with all privileges and rights of way, to erect poles and construct circuits for the establishment and operating of an electric light and power plant in said village of Williamsbridge." This resolution provided that whenever the condition of the streets and sidewalks was disturbed by the company they should be restored by the company to their original condition, subject to the approval of the Highway Committee, and that all refuse material should be at once removed at the company's expense. The resolution also provided that "in the event of personal injury to people or property" by reason of the existence, construction or repair of the company's plant, poles and wires the company alone should be liable for the damage done.

Whatever rights the Eastchester Electric Company may have acquired under this franchise are now held by the Westchester Lighting Company.

2. *South Mount Vernon Franchise.*— The village of South Mount Vernon (see introductory map) was incorporated in 1889 and its name was changed to "Wakefield" in 1894. On November 26, 1892, the Board of Trustees granted permission to the Eastchester Electric Company "to erect poles, string wires and perform all necessary labor to enable said company to furnish current for public and private electric lights for streets, stores, houses, etc., within the limits of the village of South Mount Vernon." This franchise provided that the price charged for all service rendered by the company should be the same in the limits of the village as that charged in the city of Mount Vernon according to the company's regular rates. It was also provided that the main line of wire through the village should be on some street west of White Plains Road, to be designated by the Board of Trustees. The company agreed to furnish free of charge four 32-

candle power incandescent electric lights, to be placed on Becker Avenue, one at the railroad station, one at the corner of White Plains Road and the other two between, and to maintain these lamps throughout the life of. the franchise. These lights were to be kept burning the full number of hours required for other street lights, and were to be running within 30 days after December 31, 1892.

3. *Eastchester Franchise.*— On May 28, 1895, the Board of Trustees of the village of Eastchester adopted a resolution to the effect " that an exclusive franchise be given to the Eastchester Electric Company to erect poles, string its wires and appliances in this village of Eastchester to supply electricity for lighting and power purposes to this village and the inhabitants thereof for the period of five years." The franchise was without conditions and the president of the village was authorized and directed " to sign and execute " it on behalf of the village and to " affix the corporate seal thereto." It should be noted that this franchise was granted on May 28, 1895, just nine days prior to the annexation of the village to the City of New York under chapter 934 of the Laws of 1895, in effect June 6th of that year, and only two months and three days after the village was incorporated.

4. *Pelham Franchises.*— On August 22, 1890, the Commissioners of Highways of the town of Pelham (see introductory map) granted to the Pelham Bay Park Electric Light, Power and Storage Company " the privilege of erecting poles and stringing wires " on the roads and highways of the town, on condition that the company's plant should be completed for service within a year from the date of the grant. The company agreed to furnish electric light for the use of the town free of charge for a period of three years, to the extent of one 2,000-candle power lamp for each mile of wire strung. The company agreed that after the expiration of the three years the lights furnished to the town were to be charged for at one-half the prices charged private consumers.

On October 9, 1893, the Secretary of the Department of Public Parks of the City of New York issued a permit to the Pelham Bay Park Electric Light, Power and Storage Company in accordance with action taken by the Park Board on August 2

of the same year. This permit authorized the company to erect electric light and telegraph poles in the park along the following route: "Beginning at a point on City Island Road at Pelham Bay, along said road to the Boulevard; thence northerly along said Boulevard to the northern boundary of the City of New York." All work done under the permit was to be done at the expense of the company and under the direction and to the satisfaction of the engineer in charge of new parks. The right was reserved to the Board of Parks or its president to revoke this permit at any time.

On February 6, 1897, another permit was issued which authorized the company "to erect poles and string wires on and along roads of Pelham Bay Park, over the City Island Bridge, along the City Island Road, to Bartow, and thence north and south from the Shore Road, the Pelham Bridge Road, road leading to Pelham and Boulevard, as shown on the map or plan" submitted by the company. The only condition attaching to this permit was that the work of erecting poles should be done at the expense of the company and under the supervision and to the satisfaction of the Department of Parks. The rights and privileges granted by the town franchise and these park permits are now claimed by the Westchester Lighting Company through its stock ownership of the Pelham Bay Park Electric Light, Power and Storage Company and its merger of the Pelham Electric Light and Power Company.

X. Corporate History of the Westchester Lighting Company.

The Eastchester Electric Company was incorporated July 3, 1889, under the General Manufacturing Corporations Law of 1848. This company was merged December 1, 1900, into the Westchester Lighting Company. The Pelham Bay Park Electric Light, Power and Storage Company was incorporated July 23, 1890, under the General Manufacturing Corporations Law of 1848. This company seems to have got into financial trouble within a year or two after its incorporation, and its property was sold at sheriff's sale, in March, 1892, to one Herman Vogel. A copy of the original bill of sale was produced by counsel for the Westchester Lighting Company. This sale did not include

the company's franchise. However, on January 16, 1897, Vogel transferred the property, alleging that it included the franchise, to one Charles W. Smith, who in turn, on January 9, 1900, sold it to the Pelham Electric Light and Power Company, which on December 1, 1900, was merged into the Westchester Lighting Company. It appears from the testimony, however, that all of the capital stock of the Pelham Bay Park Electric Light, Power and Storage Company was acquired by the Pelham Electric Light and Power Company on or about January 16, 1897, and is now held by the Westchester Lighting Company, so that title to the old franchise could be acquired by the present operating company by the process of merger.

The Pelham Electric Light and Power Company was incorporated January 25, 1897, under the Transportation Corporations Law, and was merged into the Westchester Lighting Company December 1, 1900. The Westchester Lighting Company itself was incorporated November 5, 1900, under the Transportation Corporations Law. This company absorbed by merger on December 1, 1900, in addition to the Pelham Electric Light and Power Company and the Eastchester Electric Company, nine other gas and electric companies operating entirely in Westchester County, and on December 1, 1902, it absorbed two additional Westchester companies. Several of the companies merged into the Westchester Lighting Company were themselves the product of preceding mergers and consolidations, so that the Westchester Lighting Company today counts no less than 30 predecessor companies in its family tree. This does not include the Pelham Bay Park Electric Light, Power and Storage Company, which is controlled through stock ownership but which has not yet been merged. Neither does it include the New York and Westchester Lighting Company, which was incorporated July 11, 1904, to furnish the means by which the control of the Westchester Lighting Company could be transferred from the United Gas Improvement Company of Philadelphia to the Consolidated Gas Company of New York. After performing its function incident to this change of ownership, the New York and Westchester Lighting Company was merged into the Westchester Lighting Company, October 20, 1904. Since July 12,

1904, the entire capital stock of the Westchester Lighting Company has been held by the Consolidated Gas Company. The historical development of the Westchester company is shown graphically on the accompanying chart, entitled "Corporate History of the Westchester Lighting Company and the Bronx Gas and Electric Company."

XI. Existing Rights and Obligations of Westchester Lighting Company within Greater New York.

On December 31, 1897, the Board of Electrical Control of the City of New York passed a resolution authorizing the Pelham Electric Light and Power Company "to lay and construct suitable wires or other conductors or subways under streets, avenues, public parks and places in the City of New York for conducting and distributing electricity under the direction of the Board of Electrical Control and its successors." The resolution provided, however, that the right granted to the company should be exercised subject to all the rules and regulations then existing or that might be made thereafter by the Board of Electrical Control or its successor. It was also provided, as in all other "franchises" granted by the Board of Electrical Control that the company should use the subways constructed by the Consolidated Telegraph and Electrical Subway Company for carrying its wires underground. Under the decision of the Court of Appeals in the West Side Electric Company's case, already referred to, this permit never had any validity as a franchise grant. A copy of the permit was filed, however, with the Public Service Commission by the Westchester Lighting Company among its franchise papers.

Independent of any rights which the Westchester Lighting Company may have acquired under permits from the City of New York it now owns and controls the following franchises authorizing the distribution of electricity in districts comprised within the limits of the city:

(1) Franchise granted by the Highway Commissioners of the town of Pelham, August 22, 1890, to the Pelham Bay Park Electric Light, Power and Storage Company; controlled through stock ownership.

(2) Franchise granted December 23, 1891, by the Board of Trustees of the village of Williamsbridge to the Eastchester Electric Company; acquired through merger.

(3) Franchise granted November 26, 1892, by the Board of Trustees of the village of South Mount Vernon to the Eastchester Electric Company; acquired through merger.

(4) Exclusive franchise granted May 28, 1895, for a period of five years by the Board of Trustees of the village of Eastchester to the Eastchester Electric Company; acquired through merger.

It appears that the company has no franchise covering that part of the old town of Eastchester between the southern boundary line of the former village of Eastchester, the Hutchinson River and the northern boundary line of the old town of Westchester. The company is not supplying any electrical current in this district, however, and there are no people living there, or at least only a very few. The district is made up for the most part of salt meadows.

This company also is without a franchise for any portion of the old town of Westchester except the village of Williamsbridge. The company is supplying, however, certain public lamps in Pelham Bay Park south of the Hutchinson River, and one private consumer just outside of the park. This consumer is the Baychester Station of the New York, New Haven and Hartford Railroad Company. Counsel has stated that this would be discontinued in the near future as the railroad company intends to do its own lighting.

The company has no franchise in its own right for supplying electricity on City Island, which was formerly a portion of the town of Pelham. Inasmuch as there is no gas supply at City Island the right to supply electricity there is of considerable importance. The franchise granted by the town of Pelham to the Pelham Bay Park Electric Light, Power and Storage Company has never been transferred to the Westchester Lighting Company. So far as public lighting in the park is concerned it is probable that the permits of the Park Department and the contracts for supplying the public lights constitute sufficient authorization. Under the Pelham franchise the grantee was required to furnish a certain amount of public lighting free for a period of three years, and after the expiration of that period to furnish public lighting at half the rates charged to private consumers for 2,000-candle power lights. As a matter of fact the Westchester Lighting Company is furnishing lights to the city at the same

rate on City Island as elsewhere under the regular contracts for public lighting. The assistant secretary of the company testified that no arc lights were being supplied by the company to private consumers. Consequently, counsel for the company argued that there was no way of measuring the price to be charged the city under the terms of the Pelham franchise.

In regard to the provision of the South Mount Vernon franchise requiring that the grantee should supply four 32-candle power, incandescent lights free on Becker Avenue, testimony was given that no such lights were now being furnished. The company's counsel presented copies of letters dated June 28, 1899, and June 30, 1899, from S. McCormick, Superintendent of Lamps and Gas, addressed to the Eastchester Electric Company. In the first letter Mr. McCormick inquired as to when the four lamps on Becker Avenue were erected and by what authority. He also asked who was paying for the lighting. In the second letter he informed the company that he did not desire to have the lamps lighted. The company's counsel stated that the answer to McCormick's first letter, which must have been written on June 29, 1899, cannot be found. The records accordingly do not show what explanation the Eastchester Electric Company made in regard to the four lamps.

For the territory included in the former village of Eastchester, the company claims a perpetual franchise, although according to the terms of the resolution of the Board of Village Trustees the company was given an exclusive franchise for the period of five years. The testimony in regard to this point is of special interest as showing the company's claims in regard to the interpretation of franchise provisions (pages 1548 and 1549 of the record):

"Commissioner Maltbie: Perhaps I should ask Mr. Garver how he interprets the five-year exclusive provision in this case.

"Mr. Garver: Well, that it gives a monopoly franchise for a term of five years, and that we have an unlimited general franchise.

"Commissioner Maltbie: Thereafter?

"Mr. Garver: Thereafter, and as that was granted in 1895, and as we have been exercising it ever since, I think that that construction has been acquiesced in by the municipal authorities. In other words, even if it were assumed that the franchise expired in 1900, we have acquired a franchise by the consent of the municipal authorities since that time."

ELECTRIC LIGHT FRANCHISES IN THE CITY OF NEW YORK

OWNED OR CONTROLLED BY

THE WESTCHESTER LIGHTING COMPANY

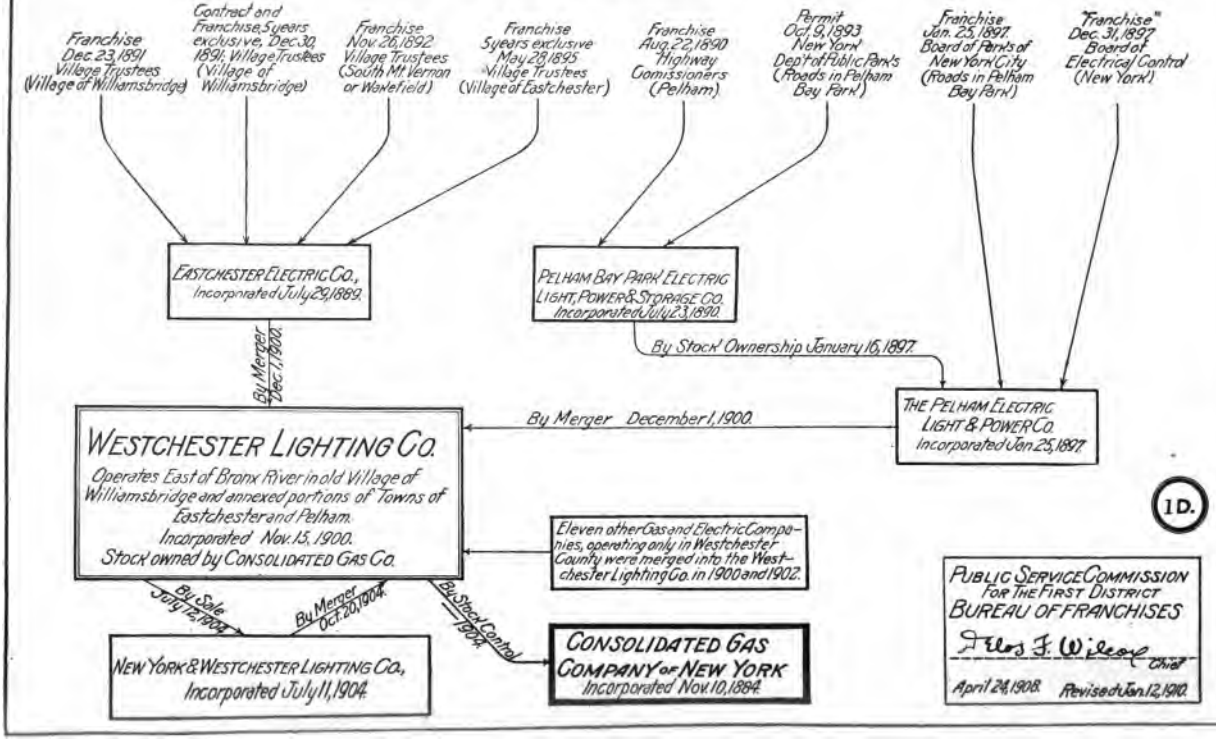


Table III gives an analysis of the electric light franchises held by the Bronx Gas and Electric Company and the Westchester Lighting Company for districts within the limits of Greater New York. The chain of title of the electric franchises of the Westchester company within the city is shown graphically on the accompanying chart entitled "Electric Light Franchises in the City of New York Owned or Controlled by the Westchester Lighting Company."

TABLE III—ANALYSIS OF ELECTRIC LIGHT FRANCHISES HELD OR CONTROLLED BY THE BRONX GAS AND ELECTRIC COMPANY AND THE WESTCHESTER LIGHTING COMPANY FOR DISTRICTS WITHIN THE LIMITS OF GREATER NEW YORK

Original grantee.....	Pelham Bay Park Electric Light, Power and Storage Co.	Eastchester Electric Co.	Eastchester Electric Co.*	Eastchester Electric Co.	Pelham Bay Park Electric Light, Power and Storage Co.	East chester Electric Co.	Pelham Electric Light and Power Co.	Bronx Gas and Electric Co.
Local authority.....	Highway commissioners.	Board of Village Trustees.	Board of Village Trustees.	Board of Village Trustees.	Department of Public Parks.	Board of Village Trustees.	Board of Parks.	Town Board and Highway Commissioners.
Date of franchise.....	August 22, 1890.	December 23, 1891.	December 30, 1891.	November 26, 1892.	Permit, October 9, 1893, authorized August 2, 1893.	May 28, 1895.	February 6, 1897.	September 11, 1893.
Territory covered.....	Town of Pelham (part since annexed to New York city).	Village of Williamsbridge.	Village of Williamsbridge.	Village of South Mount Vernon (or Wakefield).	Roads in Pelham Bay Park.	Village of Eastchester.	Roads in Pelham Bay Park.	Town of Westchester except village of Williamsbridge.
Duration of franchise.	.....	.....	Five years.....	.....	Subject to revocation at any time.	Five years (?).	.....	.....
Scope of franchise....	Poles and wires..	Electricity.....	Electricity.....	Electric lights...	Light and telegraph poles.	Electricity for lighting and power.	Poles and wires	Electricity.
When operation required to begin.	One year from date.	.....	.....	January 1, 1893.	.....	.....	.....	.....
Free lighting and free use of poles reserved.	One 2,000-candle power arc light to be furnished for every mile of wire strung for three years.	.....	Use of poles free for fire alarm, police alarm, or telephone wires operated by village for municipal purposes.	Four 32-candle power incandescent lights to be furnished.	.....	.....	.....	.....
Maximum rates.....	Public lighting free for 3 yrs.; after that at ½ price to private consumers.	.....	.....	To be same as in city of Mount Vernon.	.....	.....	.....	.....

Poles and wires.....	.....	.....	Main circuit poles to be thirty feet long and five inches through at top, straight and smooth.	Main line through the village to be on a street west of White Plains road, to be designated by village trustees.	.....	.....	.....	Town authorities may require fixtures to be repaired, upon notice.
Excavations in the streets and right of inspection and supervision.	.....	The streets and sidewalks disturbed must be restored to original condition, subject to approval of Highway Committee.	Holes open no longer than necessary, and properly protected; roadway to be replaced in good condition and surplus material removed.	.....	Under direction of engineer in charge of new parks.	.....	Under supervision of the Board of Parks.	To be made at reasonable times with least possible obstruction and work speedily completed.
Filing of maps required.	.....	.....	Maps to be furnished.	.....	.....	.....	Must notify superintendent of Parks of date and location of beginning of work.	.....
Responsibility for damages arising out of exercise of franchise.	.....	In event of personal injury to people or property, company to be solely responsible.	.....	.....	.....	.....	.....	.....
Grant exclusive.....	.....	.....	Yes.....	.....	.....	Yes.....	.....	.....
Grantee's "successors or assigns" recognized in franchise.	No.....	No.....	Yes.....	No.....	No.....	No.....	No.....	No.
Number of times franchise has been transferred.	None; controlled through stock ownership.	Three.....	Three.....	Three.....	Four.....	Three.....	Three.....	None.

* This grant was in the form of a contract executed by the parties primarily for public lighting.

XII. Franchises Granted by the Former City of Brooklyn.

1. *Combination Franchise of* 1884.— By resolution of the Brooklyn Common Council, passed May 12, 1884, and approved by the Mayor May 19th, an electric light franchise for Wards 13 to 19 inclusive, of the city of Brooklyn as it then existed, was granted to Charles Cooper & Company and a franchise "in the remaining wards of the city of Brooklyn" was granted to Pope, Sewall & Company. Under this combination franchise the grantees, their successors and assigns were authorized "to establish and maintain systems of electric lighting, for public and private use," and "to erect poles or their equivalents in the streets, avenues, lanes, alleys, and public places" of the part of the city covered by the franchise, "for the purpose of attaching electric wires and appliances thereto and furnishing to the public electric lights." It was stipulated that nothing in the grant should prevent the proper authorities from giving other parties similar rights and privileges. The franchise was granted subject to the following conditions:

First. The grantees were to commence operations within ten days.

Second. The grantees were to erect and maintain for the city four free electric arc lights of 2,000-candle power each, to be kept burning all night, and in addition one free electric light for every 50 lights furnished to private subscribers. In a parenthetical clause it was further provided that as long as the grantees should enjoy an exclusive franchise for furnishing electric light in their district, they should furnish the city one free light for every 30 lights furnished to private subscribers. The free lights were to be of the same character and power as those furnished to private customers.

Third. For additional lights furnished to the city the price was not to exceed 70 cents per night for each 2,000-candle-power arc light or 15 cents per night for each 16-candle-power incandescent light. All lights furnished the city were to burn all night. The maximum price for lights furnished to private subscribers was to be 75 cents per night for each 2,000-candle-power light and 15 cents for each 16-candle-power incandescent light, and the service to private subscribers, instead of being all-night service, was to extend from dark till midnight.

Fourth. The grantees were required to submit to the rules and regulations of the Department of City Works in the performance of all work done by them in the streets in connection with the erection and operation of their electric system, and were also to be subject to "such reasonable prudential regulations" as the Common Council might from time to time ordain.

Fifth. The grantees were to permit the electric wires of the fire and police departments of the city to be run upon their poles without charge.

Other clauses related to bonds and height of wires above the streets.

The franchise to Charles Cooper & Company included Wards 13 to 19 as they existed in 1884. In 1892 Wards 27 and 28 were created out of Ward 18, so that this franchise covers that part of the Borough of Brooklyn now known as Wards 13 to 19 and 27 and 28. This is the Williamsburg and Bushwick district, with the addition of Ward 19, which is adjacent to Williamsburg. The franchise to Pope, Sewall & Company at the time of its grant in 1884 covered the territory then and now included in Wards 1 to 12 and 20 to 25. The franchise was granted prior to the annexation of the town of New Lots to the city of Brooklyn, constituting Ward 26, and the towns of Flatbush, Gravesend, New Utrecht and Flatlands, constituting Wards 29 to 32.

2. *Edison Franchise,* 1888.— By resolution of the Common Council, October 29, 1888, approved by the Mayor November 3d, a franchise was granted to the Edison Electric Illuminating Company of Brooklyn. Under this franchise authority was given to the company, its successors and assigns "to open the streets, avenues, lanes, highways and public places in the city of Brooklyn, and to lay and maintain therein tubes, conduits, wires, conductors, cables, insulators and all necessary appliances for the business and purpose of conveying, using and supplying electricity or electrical currents for purposes of illumination and power." This grant, however, was to be exercised subject to rules and regulations prescribed by the Department of City Works with relation to all work performed under the franchise in the streets and public places of the city, both in constructing and in maintaining and operating the company's electric system. The grant was to be exercised also subject to "such reasonable and prudential

regulations" as the Common Council might from time to time ordain. The following conditions were particularly specified in the grant:

First. The company was to commence operations within 60 days from the time of the grant;

Second. The company was to permit the electric wires of the fire and police departments of the city to run through its conduits without charge;

Third. The company was required to erect and maintain for the city, free of charge, four electric arc lights of 2,000-candle-power each, or furnish their equivalent in electric current for incandescent lighting at the option of the city, and in addition was to furnish the city free of charge one arc light for every 50 arc lights furnished to private subscribers, and one incandescent light for every 30 customers of the company using incandescent lights. Lights furnished the city were to be of the same character and power as those furnished to private subscribers, and were to be erected or furnished at such places upon the circuits operated by the company as the Department of City Works might direct. In addition to the free lights the city was to be furnished arc lights of 2,000 candle power at a price not to exceed 70 cents per night, and incandescent lights of 16 candle power at a price not to exceed 15 cents per night, with a corresponding reduction in the case of incandescent lights burning less than all night. All free lights furnished the city were to burn all night, excepting incandescent lights used within doors, which were to burn the average number of hours of service to private subscribers. Lights furnished to private consumers were to be at a price not to exceed 75 cents per night, between dark and midnight, for each 2,000-candle-power arc light, and 15 cents for each 16-candle-power incandescent light.

Fourth. Work in the streets done by the company was to be done according to the directions of the Department of City Works, and under such conditions as to prevent damage to sewers, water pipes, gas pipes or other pipes. Whenever the Commissioner of City Works determined that it would be for the best interests of the city to have all excavations and removals and replacements of pavements or sidewalks in the streets done by his department the work was to be done by the city and the expense of it paid by the company upon requisition of the commissioner.

Fifth. The fulfillment of the conditions just described was to be "subject to the scientific and mechanical practicability thereof," and "the enforcement of the said conditions, if any, that cannot from scientific or mechanical causes be immediately complied with, is to be deferred until such time as the practicability thereof is demonstrated in other cities."

When this franchise was granted in 1888 the city of Brooklyn included only that portion of the present Borough of Brooklyn within the limits of the first 28 wards.

3. *Kings County Franchise,* 1894.— By resolution of the Common Council, June 11, 1894, which, being neither approved nor disapproved by the Mayor, went into effect June 23, 1894, a franchise was granted to the Kings County Electric Light and Power Company, its successors and assigns, "to construct, maintain and operate a plant or plants for building conduits, generating and supplying electricity for power, heat and light, with the privilege of disposing and supplying the same for public or private use;" and "to establish and maintain systems for electric lighting, heat and power in and throughout the city of Brooklyn." The conditions upon which this franchise was granted were the following:

First. The company agreed to place its wires under ground, except as otherwise permitted by the Subway Commission.

Second. The position of the conduits in the streets was to be determined by the Commissioner of the Department of City Works, and when once placed the conduits could not be changed except with the commissioner's consent.

Third. The company was required to file with the Commissioner of the Department of City Works on or before January 10th each year an accurate map "showing the position of all conduits and wires laid by said company, their branches and detours, and all extensions wherever made up to the 1st day of January." The company was also to restore the streets disturbed by it, and maintain the places so restored in good repair for the period of one year.

Fourth. The Commissioner of City Works was to appoint inspectors to supervise the work of the company so far as it related to the opening or repaving of the streets, and the cost of this in-

spection and supervision was to be paid monthly by the company into the City Treasury, the amount of the payments to be determined by the Commissioner of City Works.

Fifth. The company agreed to pay the city the sum of $500 within 30 days after the franchise was approved, and a like sum on the 1st day of January, 1895, and every year thereafter.

Sixth. In addition, beginning with January 1, 1895, and every six months thereafter, the company was to pay into the City Treasury "1 per cent of its gross receipts or revenues derived from whatsoever source for the six months preceding." For the purpose of determining such receipts all books and papers of the company were to be open for inspection and examination by the city authorities.

Seventh. The company agreed to supply to the city wherever its conduits or lines extended, arc lights "of 1200 candle power as estimated according to the present methods at a price not exceeding 40 cents per day or such part of a day as may be required for lighting."

Eighth. Unless at least one mile of conduits was constructed for each twelve months during the period of four successive years, commencing July 1, 1894, it was provided "that the privileges of this franchise for the purpose of building conduits and extending its wires shall cease, and no further permission for constructing conduits or laying wires through any of the streets, avenues, roads, lanes or public highways of said city shall be permitted."

Ninth. The company was required before opening any street or public place to furnish the city with a bond approved by the Mayor for a reasonable amount to guarantee the faithful performance of the conditions of the franchise and to indemnify the city against any damages resulting from the company's negligence in construction or operation.

Tenth. The last condition of the franchise was "that in case of failure to comply with any condition or provision of this resolution then the privileges, rights and franchises hereby granted shall cease and determine, and said company shall thereafter no longer have the right or power to operate its wires throughout the said city."

On June 23, 1894, the date when this franchise went into effect, the city of Brooklyn included all of the present Borough of

Brooklyn except Wards 30 and 32, which at that time were the towns of New Utrecht and Flatlands, respectively. Acts had already been passed annexing these towns to the city, but the law annexing New Utrecht did not take effect until July 1, 1894, eight days after this franchise became effective, and the annexation of Flatlands did not become effective until January 1, 1896.

4. *State Franchise,* 1896.— In December, 1891, the State Electric Light and Power Company of the State of New York applied to the Brooklyn Common Council for an electric lighting franchise. After long delay and litigation the application was denied on October 30, 1893. In February, 1894, however, the company presented a new petition and on June 11, 1894, the Common Council passed a resolution granting the company a franchise for the construction, maintenance and operation of a plant for the generation and distribution of electricity, and authorizing it to place its wires underground in any of the streets of the city. This resolution was neither signed nor vetoed by the Mayor and apparently went into effect on June 26, 1894. Thereafter the company's time for the construction of its system of conduits was once extended, and upon an application for a further extension of time in July, 1895, a dispute arose upon the question as to whether or not the company's franchise had already expired by limitation. In order to remove the doubt the company made a further application to the council in October, 1895, and on October 28 of that year resolutions were adopted by the council rescinding the old franchise and granting the company a new one. This new franchise having been vetoed by the Mayor and passed over his veto on December 30, 1895, went into effect on January 7, 1896. By this franchise the State Company was authorized "to construct, maintain and operate a plant or plants, for generating electricity for light, heat or power, and for that purpose to build or construct conduits, in any of the streets, roads, avenues, lanes or public highways of the city, in which to place tubes, wires, conductors, cables, insulators, and any necessary appliances for the business proposed, to wit: The lighting by electricity buildings, public or private, the streets of the city, and for such other purposes as shall be connected with or necessary to the successful conduct of the business proposed by the company." It was required, how-

ever, that all wires should be placed underground except as otherwise permitted by the Electrical Subway Commission. The other conditions upon which this franchise was granted were the following:

First. The position and depth of the wires in the public streets was to be determined by the Commissioner of City Works, and when once laid the position of the wires could not be changed without the consent of the Common Council.

Second. The company was to file with the Commissioner of City Works on or before January 10th and July 10th of each year, an accurate map showing the position of all its wires, their branches and extensions up to the first day of the month. The company was also to restore the streets and keep them in good repair for the term of one year wherever opened for the laying of wires.

Third. The Commissioner of City Works was to appoint inspectors to supervise the company's street work, and the cost of the inspection was to be paid by the company to the commissioner.

Fourth. The company was required to pay to the city, on December 31, 1895, and every year thereafter, $500.

Fifth. On January 1, 1896, and every six months thereafter the company was to pay 1 per cent of its gross receipts for the previous six months, and for the purpose of determining the amount of such receipts the books of the company were to be opened for examination by the city authorities.

Sixth. Unless the company, commencing July 1, 1896, and during each succeeding period of twelve months for the next four years, constructed one mile of underground conduits for the purpose of carrying out the provisions of the franchise, "its rights for further extension of conduits in any of the streets or avenues" would cease and determine.

Seventh. The company agreed to furnish to the city wherever the conduits or lines extended "arc lights of 1,200 candle power as estimated according to the present methods, at a price not exceeding 30 cents per day or such part of a day as may be required for lighting."

Eighth. The company was required to execute a bond in the penal sum of $25,000, with sureties to be approved by the mayor,

to indemnify the city from any cause of action resulting from negligence in the construction or operation of the company's lines, and to guarantee that the company would faithfully carry out the objects proposed in the franchise resolution.

Ninth. In case the company failed to comply with the provisions of the grant, then all its privileges, rights and franchises granted by the resolution would cease and determine, and the company would thereafter "no longer have the right or power to operate its wires throughout the city of Brooklyn."

In vetoing this resolution on November 9, 1895, Mayor Charles A. Schieren referred to the earlier grant of June 11, 1894, to the same company.

"That consent," said the Mayor, "required that the wires should be underground in any of the streets or public highways of the city and that by the 1st of January, 1895, and during each six months thereafter, two miles of conduits should have been constructed, or else that the franchise granted should cease and determine, and that the company, before beginning any construction in any of the streets, should furnish a bond to the city with sufficient sureties to be approved by the Mayor for such reasonable amount as might be required by the Mayor, conditioned for the faithful carrying out of the objects of the resolution and for indemnifying the city from any damages by reason of any negligence of the company in its construction or operation. By the 1st of January, 1895, no conduits whatever had been constructed and no bond given. It is understood that an extension of time was given by your Honorable Body to the company until July last. By that time, however, no conduits had been laid and no bond had been given. * * *"

The Mayor then proceeded to show how many extensions of time had been granted without effect. He continued:

"It is manifest that if there was justification in view of the history of the matter which I have cited for granting this new franchise at all, its terms should have been at least as favorable to the city as those of the franchise of June 11, 1894, sought to be replaced by it, and, indeed so much more favorable to the city as changed conditions and further experience in such matters had shown to be proper. On the contrary, we find that the new franchise in material respects is less favorable to the city, and is wanting in many of the safeguards and protections which the city is entitled to in such a matter. Among other features I may mention that, instead of the new franchise requiring that all the wires should be placed underground, permission for overhead construction is wherever permitted by the Subway Commission.

"The plain policy of the law and the plain interest of the public requires underground construction, and such policy has been rigidly enforced by the administration against the existing companies.

"The new franchise does not sufficiently subject the control of the work to the Department of City Works and its regulations. In view of the considerable disturbances of the surface of the streets under the innumerable franchises already outstanding and the gross public inconvenience therefrom resulting, any new project involving the same sort of disturbance should be subjected most completely to the City Works Department for instance, as to the seasons of the year when the surface of the streets ought not to be disturbed at all, or as to the length of a particular street which at any one time should be affected. The company should be required, at its own expense to keep and maintain in good repair the pavements of the streets which have been opened for the laying of its wires, not for one year only, as provided for in the resolution in question, but always. While the former franchise required the construction within each period of six months of two miles of conduits, the resolutions under consideration seem to require the construction of one mile only per year during the period of four years succeeding July 1, 1896. While the franchise of June 11, 1894, left the amount of the indemnity to the city to the judgment of the Mayor, the resolution now in question restricts it to $25,000.

"In other respects, also, the present proposed franchise is wanting in the provisions which I think such a franchise should contain for the protection of public interests. For instance, there is no provision for accommodating the city's wires in its conduits. The history of this company, which is partially recited above, casts some doubt upon the question whether it has been of competent means to execute the franchise which it has sought. While competition is in the public interest to be encouraged, it is manifestly against the public interest and that interest has severely suffered from the creation of franchises not backed up by substantial means and real business purposes. In view of the past, the obligation is strongly upon this company to make clear its means and purposes and to suffer in its franchise all the reasonable restraints and safeguards in its constructions and operations which the public interests may require."

On December 9, 1895, an attempt was made to pass the resolution over the Mayor's veto, but the motion was withdrawn. On December 30th, however, the franchise passed by a vote of 13 to 5. It is claimed that, under a provision of the Brooklyn charter applicable in such circumstances, the franchise went into effect January 7, 1896. In the meantime, on January 1, 1896, the law annexing Flatlands, the last of the outlying towns in Kings County, to the city of Brooklyn, went into effect. If the franchise is taken as covering the area included within the city limits on the date when the resolution was passed over the Mayor's veto it applied to all of the present Borough of Brooklyn except Ward 32. If, on the other hand, the franchise is taken as covering the entire city as it existed on January 7, 1896, it would include the entire present Borough of Brooklyn.

XIII. Corporate History of Brooklyn Companies.

The Citizens Electric Illuminating Company of Brooklyn was incorporated December 13, 1883, under the General Manufacturing Corporations Law of 1848. Among the incorporators and first trustees of the company appear the names of Charles H. Sewall and Henry W. Pope, who were presumably members of the firm of Pope, Sewall & Company, to which the city of Brooklyn granted a franchise in 1884 (see No. 1 above). The Citizens Company was merged into the Edison Electric Illuminating Company of Brooklyn by an agreement dated October 30, 1899, stock control having been acquired by the Edison Company about July 1, 1895.

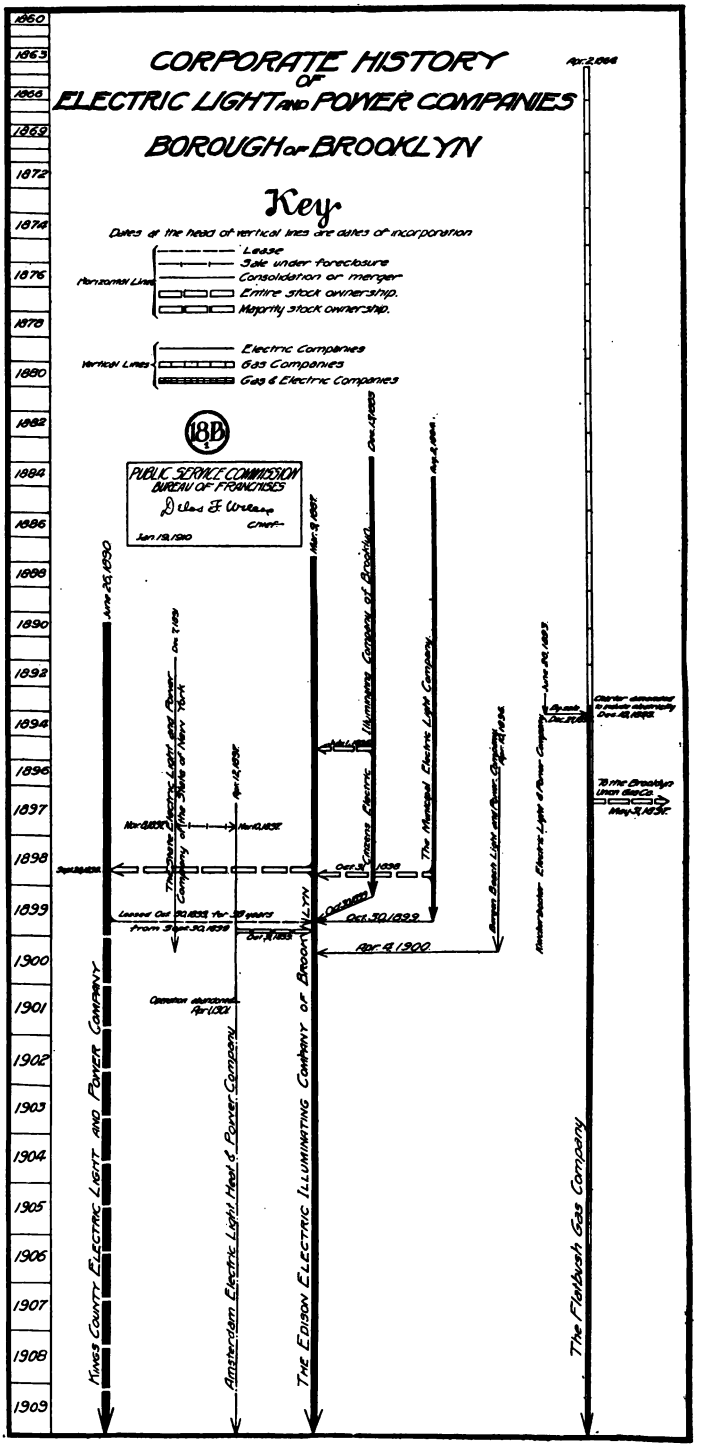
The Municipal Electric Light Company was incorporated August 2, 1884, under the General Manufacturing Corporations Law of 1848. Among the incorporators of this company appears the name of Charles Cooper, who presumably was head of the firm of Charles Cooper & Company to which the city of Brooklyn granted a franchise in 1884. The Municipal Company was merged with the Edison Electric Illuminating Company of Brooklyn by an agreement dated October 30, 1899, stock control having been acquired by the Edison Company about October 31, 1898. In an account of the development of the electric lighting business in Brooklyn, published in the "Consolidation Number" of the Brooklyn Daily Eagle January 1, 1898, it is related that Charles Cooper organized the Municipal Electric Light Company and became known as "Sudden Rich Cooper" on account of the profits he made from the sale of his electric light interests.

The Edison Electric Illuminating Company of Brooklyn was incorporated March 9, 1887, also under the General Manufacturing Corporations Law of 1848. Its purposes as stated in its certificate of incorporation were "to manufacture, use and sell electricity and electrical and mechanical apparatus in the city of Brooklyn for producing light, heat or power." On September 20, 1898, stock ownership of this company passed to the Kings County Electric Light and Power Company. The Edison Company continued to operate, however, and on October 30, 1899, took a lease of the property and franchises of the Kings County Company for a period of 38 years. On the same date the Edison Com-

pany absorbed by merger the Municipal Electric Light Company and the Citizens Electric Illuminating Company of Brooklyn. On April 4, 1900, the company also absorbed by merger the Bergen Beach Light and Power Company. In 1899 the company also obtained control through stock ownership of the Amsterdam Electric Light, Heat and Power Company. It also obtained a portion of the stock of the State Electric Light and Power Company.

The Kings County Electric Light and Power Company was incorporated June 26, 1890, under the General Manufacturing Corporations Law of 1848, for the purpose of "manufacturing, buying, vending, leasing and operating apparatus and machinery for the generation of electricity and manufacturing, supplying, vending and leasing electric light, heat and power." On October 30, 1899, the company leased "all and singular the station, plant, property, rights, privileges and franchises" then owned or thereafter to be acquired by it to the Edison Electric Illuminating Company of Brooklyn, for a period of 38 years from September 30, 1899. About one year previous to the date of this lease the Kings County Company had acquired ownership of the stock of the Edison Company, so that the relation between these companies since 1899 has been that of master and servant. The Kings County Company having withdrawn from active operation, it contented itself with receiving the profits earned by the Edison Company, which has done all the work.

The State Electric Light and Power Company was incorporated December 7, 1891, under Article VI of the Transportation Corporations Law. By decree of the Supreme Court, issued October 12, 1897, Norman J. Marsh was appointed referee in an action pending against this company. On November 8, 1897, the property and franchises of this company were struck off at public auction by the referee to P. Chauncey Anderson for the sum of $35,000. Anderson thereafter transferred his bid to the Amsterdam Electric Light, Heat and Power Company, which received a deed of the property from the referee on November 10, 1897. The State Electric Light and Power Company seems never to have engaged in active operation, although it received a franchise from the city in effect January 7, 1896.



The Amsterdam Electric Light, Heat and Power Company was incorporated April 12, 1897, under Article VI of the Transportation Corporations Law. Control of this company was acquired October 31, 1899, by the Edison Electric Illuminating Company of Brooklyn, which paid $404,500 in its 4 per cent bonds for a controlling interest in the Amsterdam Company. At that time the Amsterdam Company had something over one mile of ducts, and had been operating for some time on a limited scale and at a loss. The company ceased to operate about April 1, 1901. The Brooklyn Edison Company now holds all the bonds of the Amsterdam Company and a considerable portion of the stock.

The Bergen Beach Light and Power Company was incorporated April 10, 1896. It never received any public franchise, but operated on private property at Bergen Beach. On April 4, 1900, it was merged into the Edison Electric Illuminating Company of Brooklyn.

A graphic representation of the relations between various electric light companies in Brooklyn from a historical standpoint is shown by the accompanying chart. This chart includes not only the companies in the Brooklyn Edison system, but also the Flatbush Gas Company, whose history and franchises will be described in a succeeding section.

XIV. Existing Rights and Obligations of the Brooklyn Edison Company.

The Brooklyn Edison Company now claims to own or control the following franchises:

(1) Franchise approved by the Mayor May 19, 1884, to Charles Cooper & Company for the Williamsburg and Bushwick district, covering the territory now included in Wards 13 to 19 and 27 and 28. This franchise was acquired by merger of the company to which the original grantees are alleged to have transferred it.

(2) Franchise under same date to Pope, Sewall & Company for "the remaining wards" of the city of Brooklyn, which included at the time of the grant all that portion of the present Borough of Brooklyn comprised in Wards 1 to 12 and 20 to 25. This franchise was acquired by merger of the company to which the original grantees are alleged to have transferred it.

(3) Franchise approved by the Mayor November 3, 1888, to the Edison Electric Illuminating Company of Brooklyn for the entire city, which at that time comprised the territory now included in the first 28 wards of Brooklyn.

(4) Franchise passed June 11, 1894, and in effect without the Mayor's approval or disapproval June 23, 1894, to the Kings County Electric Light and Power Company for the entire city, which at that time included the territory now comprised in Wards 1 to 29 and 31 of the Borough of Brooklyn. This franchise is held under lease from the original grantee.

(5) Franchise originally passed October 28, 1895, vetoed by the Mayor, passed over his veto on December 30, 1895, and in effect January 7, 1896, to the State Electric Light and Power Company. Control of this franchise is claimed through ownership of the controlling interest in the stock of the Amsterdam Electric Light, Heat and Power Company, to which the franchise was transferred in 1897 by the original grantee.

(6) Private grant of March, 1896, by Percy G. Williams and Thomas Adams, Jr., to Rossiter, MacGovern and Company for the distribution of electricity for light and power on private property at Bergen Beach. This grant was transferred in 1897 to the Bergen Beach Light and Power Company, and the latter on April 4, 1900, was merged into the Edison Company.

The Edison Company reports that it has been unable to find in its records any instruments transferring the franchises originally granted May 19, 1894, from Charles Cooper & Company and Pope, Sewall & Company to the Municipal Electric Light Company and the Citizens Electric Illuminating Company of Brooklyn, respectively. There is no question, however, that the latter companies operated for several years under these franchises, and that whatever rights they obtained in them were acquired by the Edison Electric Illuminating Company of Brooklyn by merger in 1899. The ownership of these franchises is considered important by the Edison Company for the reason that they specifically authorize the grantees to maintain poles and overhead lines, while the later franchises owned or controlled by the Edison Company seem to contemplate underground construction exclusively.

The company's interpretation of the geographical application of the two franchises is that the Cooper franchise was limited to the specific area included within the wards mentioned in the grant, while the Pope, Sewall & Company franchise extended automatically with the growth of the city to include all the additional wards which have been taken in since the date of the grant.

The Kings County electric franchise, in effect June 23, 1894, was used to a limited extent by the original grantee prior to the time when the Kings County Company got control of the Edison Company, and leased its property and franchises to the Edison Company for operating purposes. Under the terms of this lease the Edison Company was to use its net annual profits from the operation of its own property and of the leased property as follows:

First, It was to pay coupons and interest on the purchase money 6 per cent bonds of the Kings County Company;

Second, It was to pay coupons and interest on the Kings County First Mortgage bonds;

Third, It was to pay all taxes, assessments, etc., levied against the Kings County property, such payments, however, to be "deemed to be charges to be deducted by the Edison Company before arriving at net profits."

Fourth, After the payment in full of the obligations just enumerated, the Edison Company was to turn over to the Kings County Company the remainder of such net profits as would otherwise be applicable to dividends on the Edison stock.

The Edison Company's control of the State Electric franchise is indirect. The franchises and property of the State Company having been sold to the Amsterdam Electric Light, Heat and Power Company, which in turn is controlled through the ownership of its bonds and a majority of its stock by the Edison Company, it is, of course, impossible for the Edison Company to operate under this franchise. It could not do so unless it were to merge the Amsterdam Company or secure through some other means direct ownership of the franchise.

The two franchises granted in 1884 authorized the grantees to "establish and maintain systems of electric lighting for public and private use." It is to be noted that, under the franchises of 1884 and 1888, the grantees in each case were required to supply to the city four 2,000-candle-power arc lights free. Under the 1884 franchises the grantees were to furnish one electric light for every 50 furnished to private subscribers, and under the 1888 franchise the company was to furnish one arc light for every 50 furnished to private consumers, and one incandescent

light for every 30 consumers. When questioned in regard to these provisions, Mr. Freeman, Second Vice-President of the Edison Company, testified as follows (pages 1781–3):

"We are now furnishing the full measure of free lights as required under all of the franchises. * * *"

"Q. How many 2,000-candle-power arc lamps are you supplying free now?" A. In the neighborhood of 100.

"Q. And that I suppose is made up of the three times four, which are twelve, plus one for every 50? A. Yes.

"Q. That is the way it is computed? A. Yes, for every 50 arc lights furnished to commercial consumers, and we are also furnishing the required quota of incandescent lighting as called for. I may say here, so that the matter may go on record, an issue has arisen in connection with that proportion of arc lighting. The provision for the incandescent lighting is clear, that the incandescent service furnished the city shall be of the same character as the incandescent lighting furnished to private consumers and shall be furnished for the corresponding hours of service of private consumers taking service. The provision for the arc lighting says one arc light in 50, but all free arc lights shall burn all night. Under existing conditions that is a very unreasonable provision, and our contention has always been that, under the spirit of the franchise, whatever arc lighting we furnished to the city shall be furnished for the proportionate hours of use that consumers use their arc lights. * * * The city, however, has taken the position that, whatever the merits of the case may be, the letter of the franchise provides for an all-night light to be furnished in proportion one to each 50, and the Commissioner of Water Supply, Gas and Electricity under that interpretation is deducting from our city lighting bills a sufficient number of arc lights to correspond to that interpretation of the franchise. We are contesting that, as a matter of equity, and when the matter has been decided in the courts, the city or we will have to comply with whatever the ruling of the court is; but in the meantime, and for a considerable time past, the city has been getting the maximum interpretation subject to our ability to get part of it back. I think that may be of interest while you are looking into the franchise situation, to know everything that is involved."

Further on, Mr. Freeman testified as follows (page 1778):

"Q. Do you consider that those franchises give you the right to furnish electricity for all purposes? A. They were so construed by both the Citizens and the Municipal Companies before we acquired ownership in those companies, and there has never been any contest in the matter. * * * I believe all other franchises specify the other features of the service, and undoubtedly the reason is that at the time of the granting of these earlier franchises the electric lighting business was confined to lighting service; it was not known at that time that electricity was available for power purposes or for heating purposes, and lighting was specified as the only feature of the service that was then understood. The other features are to-day recognized as an essential part of an electric lighting company, and would come as natural accessories."

There were provisions in the Kings County franchise and the State Electric franchise for payments of $500 a year and 1 per cent of the grantees' gross receipts to the city. Mr. Freeman testified that the $500 payments in the case of each franchise have been regularly made, and also that the gross receipts taxes have been paid. He said, however, that the income of the Amsterdam Company, which now owns the State Electric franchise, was very small. On the other hand, the gross income of the Kings County Company was very considerable. He said that the gross receipts of the latter company were figured as including "every item of revenue that the Kings County Company receives." When questioned in regard to dividends on the Edison stock held by the Kings County Company, he said that, if such dividends were received, they would be included in the company's gross receipts, but that as a matter of fact the Edison Company's stock does not pay dividends. It is to be noted from the description already given of the lease between the Kings County Company and the Edison Company that provision is made for the payment of all the fixed charges of the Kings County Company directly by the Edison Company, and for the transfer of the Edison Company's remaining net profits directly to the Kings County Company, instead of these profits being used for dividends on the Edison stock. As a result of this agreement all the taxes and interest charges are paid for the Kings County Company before it has any "gross receipts." In the calendar year 1908 the net profits turned over by the Edison Company to the Kings County Company, and constituting the latter company's "gross receipts" upon which it paid the 1 per cent tax under the terms of its franchise, amounted to $777,532.65; while the interest on its bonds paid by the Edison Company amounted to $435,560. The amount of taxes, assessments, etc., paid by the Edison Company on the Kings County Company's account cannot be ascertained, for the special franchises of the two companies are lumped together in the assessments. It remains clear, however, that by means of its arrangement with the Edison Company, under the terms of its lease the Kings County Company does not pay the 1 per cent tax on a sum equal to its $435,560 interest charges plus the amount of its taxes and assessments.

The electric franchises granted to the Kings County Electric Light and Power Company and to the State Electric Light and Power Company each required that the grantee should construct at least one mile of conduits a year for four consecutive years, the former under penalty of a forfeiture of the grant. Mr. Freeman testified that the requirements had been complied with. No maps were furnished showing the amount of conduits laid under the two franchises and the dates on which such conduits were constructed.

There is an interesting question as to the rights of the company derived from the Bergen Beach Light and Power Company, which never had any public franchises. It appears that all the streets at Bergen Beach are privately owned, and that the Bergen Beach Light and Power Company acquired its rights to operate there from an agreement with the property owners. Copies of the original agreement between the owners of the property and Rossiter, MacGovern and Company, dated March 7, 1896, and of another agreement by which this one was transferred to the Bergen Beach Light and Power Company, were furnished by the Edison Company and are now on file with the Bureau of Franchises. The original agreement was in part as follows:

"The parties of the first part [the property owners] do hereby give and grant to the parties of the second part the *exclusive and perpetual* right and privilege:

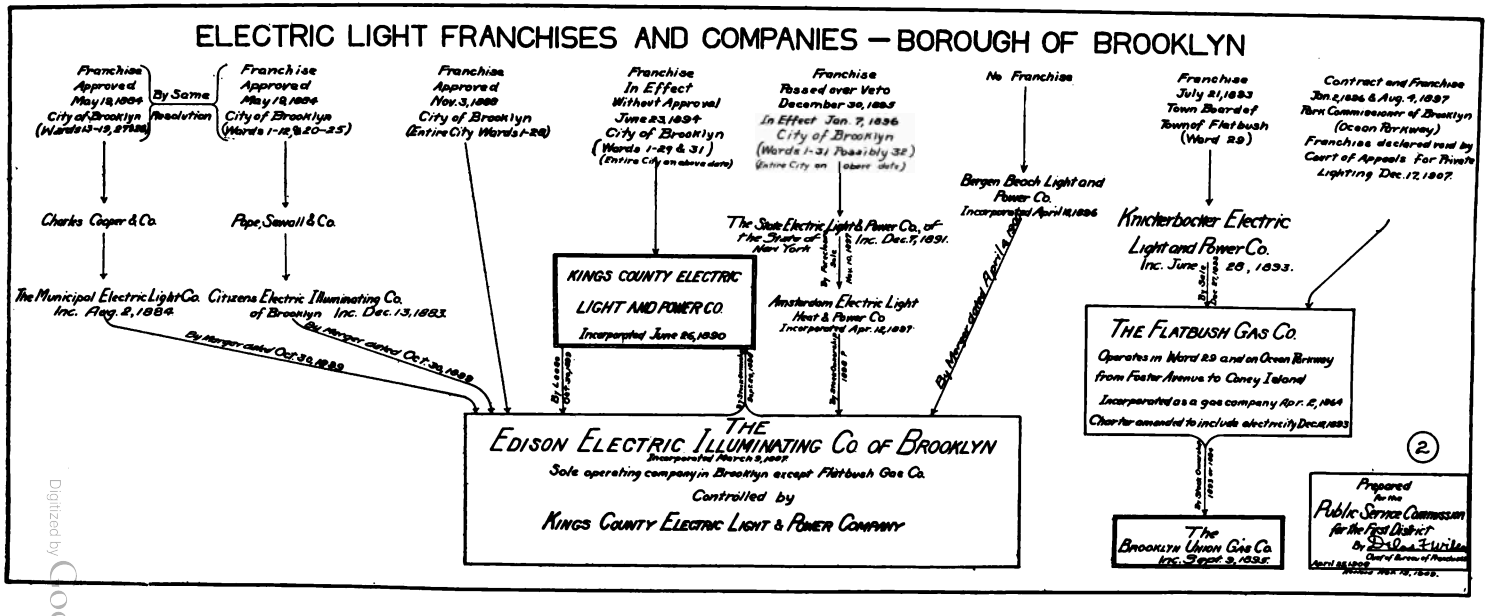
"*First*, of lighting by electricity the premises or property situated at Bergen Beach, in the city of Brooklyn, county of Kings, particularly as follows:

"Blocks number 39, 48, 62, 61, 60, 59, 58, 57 and 56, and all streets, which, with the aforesaid blocks comprise the territory bounded as follows: [Here follows a description of the area.]

"Also the right to erect poles and conductors upon other streets and parts of the said Bergen Beach owned by the parties of the first part, but such right shall not be construed to be perpetual, but shall be simply a consent to such erection similar in nature and effect to the consents required by law for the erection of any such poles and conductors upon the line of a street or avenue.

"And of generating electricity and applying the same for the purposes of light or power upon the territory above described, and further agree that, in leasing any portion of the said premises to other parties, they will in any and all leases hereinafter so made, require such lessees to use electric power or electric light furnished by the parties of the second part where such lessees desire such light or power by electricity.

ELECTRIC LIGHT FRANCHISES AND COMPANIES — BOROUGH OF BROOKLYN



"*Second*, to construct and maintain a plant on said property for the manufacture of electricity for light or power purposes.

"*Third*, to use and occupy the streets or other parts of said property, for the erection of poles with the necessary conductors for the transmission of electric current.

"Nothing in this agreement contained shall be construed to prevent the parties of the first part or their lessees from using any other system of lighting or power at such times and seasons as the parties of the second part shall discontinue furnishing electric light and power as herein provided.

"It is understood that the above rights and privileges will in no way conflict with the rights or privileges already granted to the Brooklyn Heights Railroad Company which are understood to be as follows:

"*First*, to light their own property, the large dock, and the structure known as the Phoenix Wheel.

"*Second*, to operate their cars."

This agreement contains other provisions binding the grantees to furnish the property owners with a certain amount of electric current during three months of the year. The interest in this original grant now rests on the claim that if at any time the streets at Bergen Beach were opened and dedicated to the public this prior grant from the property owners would operate as a public franchise. The Edison Company claims, of course, that irrespective of any rights secured under this old agreement its other franchises would immediately extend over these streets if at any time they should be dedicated to the public.

For a graphical exposition of the electric light franchises of Brooklyn and the way in which they have come into the possession of their present owners the accompanying chart, entitled "Electric Light Franchises and Companies — Borough of Brooklyn," has been prepared. The various provisions of the Brooklyn franchises are shown comparatively in Table IV, entitled "Analysis of Electric Light Franchises held by the Edison Electric Illuminating Company of Brooklyn and the Flatbush Gas Company."

TABLE IV.—ANALYSIS OF ELECTRIC LIGHT FRANCHISES HELD BY THE EDISON ELECTRIC ILLUMINATING COMPANY OF BROOKLYN AND THE FLATBUSH GAS COMPANY*

Original grantee	Pope, Sewall & Co.	Charles Cooper & Co.	Edison Electric Illuminating Co. of Brooklyn.	Kings County Electric Light and Power Co.	State Electric Light and Power Co.	Knickerbocker Electric Light and Power Co.
Local authority	Common Council.	Common Council.	Common Council.	Common Council.	Common Council.	Town Board.
Date of franchise	Passed May 12, 1884.	Passed May 12, 1884.	Passed Oct. 29, 1888.	Passed June 11, 1894.	Passed over veto Dec. 30, 1895.	July 21, 1893.
Action by mayor	Approved May 19, 1884.	Approved May 19, 1884.	Approved Nov. 3, 1888.	Neither approved nor disapproved.	Vetoed Nov. 9, 1895.	.....
Territory covered by franchise.	Wards 1 to 12, 20 to 25, city of Brooklyn	Wards 13 to 19, and 27 and 28, city of Brooklyn.	Wards 1 to 28, city of Brooklyn.	Wards 1 to 29, and 31, city of Brooklyn.	Wards 1 to 31, city of Brooklyn (possibly also ward 32).	Town of Flatbush, (ward 29) city of Brooklyn.
Area	15.62 square miles	6.87 square miles	31.4 square miles	47.2 square miles	55.6 square miles (or 77.6 square miles.)	5.9 square miles.
Population of district in 1910.	787,530	471,965	1,437,166	1,539,823	1,616,939 (or 1,634,351).	73,047.
Scope of franchise	Electric lighting	Electric lighting	Electric lighting, electricity or electrical currents for purposes of illumination or power.	Electricity for power, heat and light.	Electricity for light, heat and power.	Electricity for "lighting and using of it for power and traction and power."
When operation required to begin.	Must *commence operations* within ten days from date of grant.	Must *commence operations* within ten days from date of grant.	Must *commence operations* within sixty days from date of grant.	From July 1, 1894, one mile of conduits required to be constructed each year for four consecutive years, on penalty of forfeiture.	From July 1, 1896, one mile of ducts required to be constructed each year for four consecutive years, on penalty of forfeiture of right to extend lines.	.....

Free lighting and compensation in money.	Four 2,000 candle power arc lights; one electric light for every fifty furnished to private subscribers (one for every thirty as long as no competitive franchise is granted)	Four 2,000 candle power arc lights; one electric light for every fifty furnished to private subscribers (one for every thirty as long as no competitive franchise is granted).	Four 2,000 candle power arc lights; or equivalent in incandescent light; one arc light for every fifty furnished to private consumers; one incandescent light for every thirty consumers.	$500 a year and 1 per cent of gross receipts	$500 a year beginning Dec. 31, 1895, and 1 per cent of gross receipts.	
Free use of poles and conduits reserved.	Poles free to wires of fire and police departments.	Poles free to wires of fire and police departments.	Conduits free to wires of fire and police departments.	.....	.....	.....
Maximum rates for public lighting.	Seventy cents per night for each 2,000 candle power arc light and fifteen cents for each sixteen candle power incandescent light, all night service.	Seventy cents per night for each 2,000 candle power arc light, and fifteen cents for each sixteen candle power incandescent light, all night service.	Seventy cents per night for each 2,000 candle power arc light, and fifteen cents per night for each sixteen candle power incandescent light; all night service, with deduction for indoor lights burning less time.	Forty cents per day for each 1,200 candle power arc light.	Thirty cents per day for each 1,200 candle power arc light.	.....
Maximum rates for private lighting.	Seventy-five cents per night for each 2,000 candle power arc light, fifteen cents per night for each sixteen candle power incandescent light; service from dark till midnight.	Seventy-five cents per night for each 2,000 candle power arc light, fifteen cents per night for each sixteen candle power incandescent light; service from dark till midnight.	Seventy-five cents per night for each 2,000 candle power arc light, fifteen cents per night for each sixteen candle power incandescent light; service from dark till midnight.	.....	.....	.....
Regulation of service and obligation to supply public lighting.	Service subject to "reasonable prudential regulations" ordained by Common Council.	Service subject to "reasonable prudential regulations" ordained by Common Council.	Service subject to "reasonable prudential regulations" ordained by Common Council.	Grantee must supply city wherever grantee has conduits.	Grantee must supply city wherever grantee's conduits or lines extend.	.....

*NOTE.— In addition to its franchise from the old town of Flatbush the Flatbush Gas Company secured a franchise from the City of New York under date of December 28, 1909, by which the company is authorized to supply electricity through a narrow district extending on either side of Ocean Parkway from Foster avenue to the Atlantic ocean, and this grant is subject to the elaborate terms and conditions imposed by the standard form of franchises now used by the city under the provisions of the Greater New York Charter. The details of this grant are too numerous and complex to be shown in this table.

TABLE IV.—ANALYSIS OF ELECTRIC LIGHT FRANCHISES HELD BY THE EDISON ELECTRIC ILLUMINATING COMPANY OF BROOKLYN AND THE FLATBUSH GAS COMPANY* (*Concluded*)

Publicity of accounts...	.....	.....	.....	Books open to inspection by city authorities to determine gross receipts.	Books open for examination by city authorities to determine gross receipts.	.....
Poles.....	Department of City Works may require use of gas posts with vertical extensions in lieu of ordinary poles.	Department of City Works may require use of gas posts with vertical extensions in lieu of ordinary poles	.....	.....	.....	.....
Wires.....	To be stretched at least twenty-five feet above sidewalk and at street crossings as high as thirty-five feet if required by Department of City Works	To be stretched at least twenty-five feet above sidewalk and at street crossing as high as thirty-five feet if required by Department of City Works.	.....	.....	Position and depth of wires to be determined by Commissioner of City Works; position to be changed only with consent of Common Council.	.....
Underground construction required.	.....	.....	Yes.....	Yes, except as otherwise permitted by subway commission; subject also to Department of City Works.	Yes, except as otherwise permitted by subway commission.	.....
Excavations in streets..	Subject to regulation by Department of City Works.	Subject to regulation by Department of City Works.	Subject to rules of Department of City Works; no damage to be done to sewers, water pipes, gas pipes, etc.	Streets to be restored and street surface maintained by grantee for one year, subject to Commissioner of City Works.	Streets to be restored and street surface maintained by grantee for one year, subject to Commissioner of City Works.	.....
Right to inspect and supervise street work reserved.	.....	.....	Street work may be done by city in discretion of Commissioner of City Works at expense of company.	Commissioner of City Works may appoint inspectors, the expense to be paid monthly by the grantee.	Commissioner of City Works may appoint inspectors, cost of inspection to be paid by grantee.	.....

Filing of maps required.	.....	.....	.....	Maps showing position of conduits and wires to be filed with Department of City Works, by January tenth each year.	Maps showing position of wires to be filed with Commissioner of City Works, January tenth and July tenth, each year.	.....
Indemnity bond required.	Must furnish bond with penalties and conditions prescribed by mayor, approved by mayor and corporation counsel, for faithful performance of contracts.	Must furnish bond with penalties and conditions prescribed by mayor, approved by mayor and corporation counsel, for faithful performance of contracts.	Bond of $25,000 to be furnished with penalties and conditions prescribed by mayor. Fulfillment of franchise conditions subject to scientific and mechanical practicability as "demonstrated in other cities."	Bond for a reasonable amount with sureties approved by mayor to be filed before opening of any streets.	Bond for $25,000 with sureties approved by mayor to indemnify city against damage suits, and to guarantee fulfillment of franchise requirements.	.....
Exclusiveness of grant, and forfeiture.	Not permanently exclusive.	Not permanently exclusive.	.....	Franchise to be forfeited on failure of grantee to comply with any of its provisions.	Franchise to be forfeited on failure of grantee to comply with conditions.	.....
Grantee's "successors or assigns" recognized in franchise.	Yes.....	Yes.....	Yes.....	Yes.....	Yes.....	No.
Number of times franchise has been transferred.	Two.....	Two.....	.....	One.....	One.....	One.

XV. Electric Franchises and Other Rights of the Flatbush Gas Company.

On July 21, 1893, the Town Board of the town of Flatbush granted a franchise to the Knickerbocker Electric Light and Power Company authorizing the company "to conduct and distribute electricity for lighting, and to the using of it for power and traction within the town of Flatbush, Kings County, New York, and in the streets, avenues, public parks and places thereof, and public and private buildings therein, and for such purposes to generate and supply electricity, and to make, sell and lease all machines, instruments, apparatus and other equipments therefor, and to lay, erect and construct suitable wire and other conductors and the necessary poles, pipes or other fixtures in, on, over and under the streets, avenues, public parks and places" of the town. The Knickerbocker Electric Light and Power Company was incorporated June 28, 1893, under Article VI of the Transportation Corporations Law. On December 27, 1893, the company sold "its property rights, franchises and privileges" to the Flatbush Gas Company for $15,000.

The Flatbush Gas Company was originally incorporated April 2, 1864, under the act to authorize the formation of gas-light companies, passed in 1848. On December 18, 1893, however, the company filed an amended certificate of incorporation, in which it recited the purchase of the property and franchises of the Knickerbocker Electric Light and Power Company, and certified an extension of its own objects "to the manufacturing and using of electricity for producing light, heat and power in lighting streets, avenues, public parks and places, and public and private buildings of cities, villages and towns within the state of New York."

The stock of the Flatbush Gas Company is now owned by the Brooklyn Union Gas Company having been acquired by the latter May 31, 1897. The former company does not manufacture gas, but receives it from Brooklyn Union Gas Company at a price fixed by the latter, and distributes it to its patrons in Ward 29. The company does, however, manufacture and distribute electricity on its own account. Its operations are confined to Ward 29 and certain extensions of its lines on Ocean Parkway and a few other streets beyond the limits of the ward.

Under a contract dated January 2, 1896, between this company and the Commissioner of the Department of Parks of the city of Brooklyn the company agreed to erect and maintain on Ocean Parkway 90 arc lights of 1,200 candle-power for public lighting for a period of three years. The price to be paid by the city was 28 cents per night for each lamp. The lights were to be operated on an all-night schedule and the company's wires and conductors to be thoroughly insulated.

On August 4, 1897, the company entered into a new contract with the Park Commissioner of Brooklyn, in accordance with which it agreed to remove from Ocean Parkway the poles and wires then in use for lighting the parkway from Prospect Park to Coney Island, and place them in a subway. The company was also to place therein all the wires necessary "for supplying electric current to such public or private consumers as the said company may desire." The Park Commissioner agreed that the company might extend ten lateral subways to the sides of the parkway at the time of putting down the main subway, and from the terminals of these laterals might "make connections through the medium of small pipes to be laid under the surface of the sidewalks for the purpose of lighting houses along said parkway." The Park Commissioner also agreed that the company might supply electric current "to such public or private consumers as may be desirous of using it" on condition that connections should be made underground and that the company in making such connections should not disturb the surface of the roadways or walks. The operations of the company under this contract were to be subject to reasonable supervision and regulation by the Park Commissioner. The company was also authorized, in placing its conduits, to provide spaces for other wires than those then in use, and was authorized to lease such wires or privileges to other parties. The company agreed particularly to supply room in these conduits for the City Fire Department wires. The company was to furnish 91 arc lights of not less than 1,200 candle-power, and any additional lights that might be required. The previous contract was to be abrogated as soon as the company's underground system was completed, and the new contract was to continue in force for three years from Sep-

tember 1, 1897. The city agreed to pay 32 cents per light per night from the time of the completion and successful operation of the underground system.

The Court of Appeals, in *Matter of the People ex rel. The Flatbush Gas Co.* v. *Bird S. Coler, as President, et al.,* 190 N. Y. 268, decided that the contract with the Park Commissioner dated August 4, 1897, did not constitute a valid franchise giving the company legal authority to supply current to private consumers along the Ocean Parkway. On April 24, 1908, the company presented to the Board of Estimate and Apportionment a petition asking for a franchise along Ocean Parkway from Foster Avenue (the southern boundary line of Ward 29) to Coney Island. Upon investigation the city authorities found that the company was operating outside of Ward 29 at several points in addition to Ocean Parkway. By resolution of the Board of Estimate and Apportionment, adopted June 26, 1908, the company was asked to consult with the Corporation Counsel in regard to existing franchise rights, and file a new application covering all the territory in which it was operating outside of Ward 29. The company did not accede to this request, however, and on September 16, 1908, the Acting Corporation Counsel reported to the Board of Estimate and Apportionment that he had given instructions to commence legal proceedings to oust the company from the streets it was at that time illegally using. Thereafter the company expressed its willingness to withdraw from those streets outside of Ward 29 not included in its pending application. At the request of the city the Edison Electric Illuminating Company of Brooklyn agreed to take over the services of the Flatbush Gas Company in streets where the latter company had no franchise rights. The matter of preparing a franchise contract covering the company's conduits and services on Ocean Parkway and adjoining streets was then taken up with renewed vigor, and finally, on October 11, 1909, the City Division of Franchises reported to the Board of Estimate a form of franchise contract acceptable to the company, which was finally adopted by the Board of Estimate and Apportionment, and was approved by the Mayor, December 21, 1909.

This franchise authorizes the company to supply electric current for public and private purposes within a certain limited ter-

ritory on either side of Ocean Parkway from Foster Avenue to the Atlantic Ocean. The privilege is granted for a period of 25 years from December 17, 1907, the day on which the Court of Appeals decided that the company had no franchise on Ocean Parkway, with the right reserved to the company to a renewal for a further period of 25 years upon a fair revaluation of the grant. The company is required to make an initial payment of $500 for this franchise, and to pay annually into the city treasury certain minimum sums or certain percentages of its gross receipts in the territory covered by the grant. These minimum sums range from $150 a year for the first five years to $650 per year for the last five years of the original franchise period, and the proportions of gross receipts which must be paid in case they amount to more than these minimum sums range from 1 per cent during the first five-year period to 5 per cent during the last five-year period.

For a graphical illustration of this company's corporate history and an analysis of its Flatbush franchise, reference should be made to the corporate history chart of the electric lighting companies of Brooklyn and to Table IV.*

In an opinion dated November 27, 1900, Corporation Counsel John Whalen advised the Commissioner of Public Buildings, Lighting and Supplies that in his judgment a so-called franchise granted by the Town Board of the Town of Newtown to the Bowery Bay Electric Light and Power Company was insufficient as a consent of the municipal authorities. In his opinion the Commissioners of Highways were the proper officers to grant local franchises in towns prior to the date of consolidation. It is to be noted that the Flatbush Gas Company's only electric light franchise for Ward 29 was originally granted by the Town Board of the town of Flatbush. However, in an opinion dated September 28, 1909, the corporation counsel advised the Board of Estimate and Apportionment, relative to this company's rights, as follows: "At the present time I am of the opinion that it would be decidedly unwise to test the question as to the authority of the Town Board to grant franchises of this nature, at this time and in this particular case."

* See opposite p. 91, and p. 92, *ante*.

XVI. Franchises Granted for the Territory now Occupied by the New York and Queens Electric Light and Power Company, Queens.

Franchises covering different parts of this territory were originally granted by several local authorities to several different companies, which, with few exceptions, have now been consolidated into the New York and Queens Electric Light and Power Company.

It seems strange that electric lighting should not have been introduced into Long Island City prior to 1894. The official records of the city contain assertions that electricity was kept out by the influence of the East River Gas Light Company. A resolution granting a franchise to the Queens County Electric Light Company was passed by the city council September 7, 1886, by a vote of four to three, but was rescinded September 16th, by a vote of three to one. In view of the latter action the resolution was returned to the council by the Mayor October 5, 1886, with his veto. In the meantime, on September 21, 1886, a resolution was passed by the city council granting a franchise to the Long Island City Electric Light Company. This resolution was vetoed by the Mayor October 4, 1886. The Long Island City Electric Light Company, however, renewed its application in 1888 and again in 1891. On November 10, 1891, the company was granted a franchise, on December 22, 1891, a public lighting contract was awarded to it, and on December 29, 1891, the terms of the proposed contract were set forth in a resolution adopted by the city council. On April 5, 1892, however, the council passed resolutions purporting to rescind both the franchise of November 10, 1891, and the contract authorized December 22, and December 29, 1891. Both rescinding resolutions were vetoed by the Mayor on May 2, 1892, and thereafter, on July 5, 1892, were passed over his veto. It seems probable that the action of the council attempting to rescind the franchise was ineffectual, but no evidence has been found to show that the company ever exercised franchise rights in Long Island City, or transferred its franchise to any other party.

1. *Long Island City Franchise.*— A franchise was granted December 13, 1894, by the Common Council of Long Island City to the Electric Illuminating and Power Company of Long Island

City. This franchise takes the form of a resolution, by which permission was granted to the company "to erect and maintain poles and wires in Long Island City for the purpose of supplying electric lights and power to such individuals, firms and corporations as may desire to use the same, provided, in case any poles shall be erected at a place which the Commissioner of Public Works shall deem prejudicial to the interests of the city, he shall have authority by a notice in writing to require said company to remove such poles to such other convenient place as such Commissioner shall designate."

2. *Newtown Franchises.*— The several franchises granted by the local authorities of the town of Newtown for electric lighting purposes covered the territory which now constitutes Ward 2 of the Borough of Queens. There were no incorporated villages within its limits prior to its annexation to the City of New York; accordingly, a franchise granted by the proper town authorities covered all the streets within the limits of the district, except county roads. Those in turn were covered by the franchise granted by the Board of Supervisors.

A. The Seely Franchise, 1891.— A franchise was granted, June 12, 1891, by the Highway Commissioners of the town of Newtown to the Newtown Electric Light Company. The petition of the company asking for the franchise was dated May 7, 1891, and asked for permission to "erect poles and lay tubes in the highways, streets and avenues in the township of Newtown, for the operation and maintenance of electricity for light only," all processes of construction to be under the jurisdiction of the Highway Commissioners. This application was granted on June 12 of the same year, on the following conditions:

(1) "The poles must be erected so they don't interfere with the public travel;"

(2) The company "must be commencing in operation in the time of one year, if not the franchise will be void;"

(3) "A bond to the amount of $5,000 has to be filed at the County Clerk's office."

This franchise has had an unusual history. According to the claim of the New York and Queens Company, title to this franchise passed from the Newtown Electric Light Company to John A. Seely; from him to the Newtown Electric Light and Power

Company; from it through Henry C. Adams, Jr., Receiver, to J. H. Warner; from him to P. J. Bennett; from him back to J. H. Warner; from him to Thomas W. Stephens (also to quiet title, directly from John A. Seely to Thomas W. Stephens); from him to the New York and Queens Gas and Electric Company; from it by merger to the New York and Queens Electric Light and Power Company. The details of these transfers are given in Exhibit V.

B. The McKenna Franchise, 1895.—Another franchise was granted by the Highway Commissioners of Newtown on May 20, 1895, to Francis McKenna. This franchise authorized McKenna or his assigns "to enter upon and open the several streets, roads, avenues, public parks or places in the town of Newtown for the purpose of laying and erecting the necessary poles, pipes or other fixtures in, on or over and under the said streets, roads, avenues, public parks or places for the purpose of supplying to the said town and its inhabitants electricity for light, heat or power." The only condition imposed upon the grantee by this franchise was that he should restore the streets and public places opened by him to as good a condition as they were in before they were opened, and do it within a reasonable time after their opening.

On July 16, 1895, McKenna transferred this franchise to the Newtown Light and Power Company in return for 192 shares of the capital stock of the company.

C. The County Road Franchise, 1897.—A franchise was granted March 15, 1897, by the Board of Supervisors of Queens County to the Newtown Light and Power Company, permitting the company, its successors and assigns, "with the written consent of the County Engineer, to enter upon and open the several county streets, roads, highways, avenues, public parks and places within the town of Newtown in the manner and subject to the limitations presented by the county engineer, for the purpose of laying, erecting and constructing suitable wires or other conductors, with the necessary poles, pipes or other fixtures in, on, over and under the county streets, roads, etc., as aforesaid, for the purpose of supplying the said town and its inhabitants with electricity for light, heat and power." The conditions attached to this franchise were that the company should repave or otherwise put in proper

order at its own expense, without unreasonable delay and to the satisfaction of the County Road Engineer and the Board of Supervisors, any street or public place opened or disturbed by it, and that the company should file with the clerk of the Board of Supervisors a bond with two or more sureties, to be approved by the Board of Supervisors in the sum of $5,000, conditioned upon the faithful performance of the provisions of the franchise.*

D. The Miller Franchise, 1897.—Another franchise was granted on April 28, 1897, by the Highway Commissioners of Newtown to Charles Miller. Under this franchise permission was given "to said Charles Miller, his heirs and assigns, to enter upon and open all or any of the several streets, roads, avenues, public parks or places in the town of Newtown for the purpose of laying and erecting necessary poles, pipes or other fixtures in, on, over and under the said several streets, roads, avenues, public parks and places for the purpose of supplying to the said town and its inhabitants electricity for light, heat or power." As in the case of the McKenna franchise, the only condition attached was that the grantee should restore the streets and public places disturbed by him to as good condition as they were in before such disturbance and do it within a reasonable time after such disturbance.

This franchise was sold by Miller on June 16, 1899, to the New York and Queens Gas and Electric Company in consideration of the sum of one dollar and "other good and valuable considerations." In this transfer Miller said: "I hereby represent and covenant that I am the sole owner of said franchise and of all rights granted under said instrument and resolution, that the same are free from any claim, lien or incumbrance and that I have the right to assign the same."

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* By chapter 333 of the Laws of 1893, approved April 7, 1893, the Legislature had authorized the Board of Supervisors of any county, by a majority vote, to adopt the County Road System, and thereafter designate as county roads "such portions of the public highways in such county not within an incorporated village or city as they shall deem advisable; and shall cause such designation and a copy of such county roads to be filed in the clerk's office of such county." It was provided further that "the roads so designated shall, as far as practicable, be leading market roads in such county." It was also provided that county roads should be "exclusively under the jurisdiction of the Board of Supervisors and the County Engineer of the county, and exempt from the jurisdiction of the highway officers of the town." This provision was amended by chapter 375 of the Laws of 1895, in effect April 23, 1895, so as to permit the supervisors to designate as county roads public highways within the limits of incorporated villages. Village highways so designated were to be exempt from the jurisdiction of the village officers performing the duties of highway commissioners. The various highways in the town of Newtown that had been designated as county roads at the time of the granting of this franchise are shown on a map of "County Roads in the Borough of Queens," numbered "10-D-a," on file in this office.

3. *Town of Flushing Franchises.*— Franchises granted by the local authorities of the old town of Flushing covered all the district now constituting Ward 3 of the Borough of Queens, outside of the limits of the old incorporated villages of Flushing, Whitestone and College Point.

A. Commissioners of Highways and Town Board grant, 1897.— A franchise was granted December 29, 1897, by the Commissioners of Highways of the town of Flushing and ratified and approved December 30, 1897, by the Town Board of the town of Flushing to the Flushing Electric Light and Power Company. By this grant the Highway Commissioners gave to the company, its successors and assigns "the franchise or right to place and maintain suitable wires and other conductors with the necessary poles, pipes and other fixtures in, on, over and under the streets, roads, avenues, highways, public parks and places in the town of Flushing not within the corporate limits of any incorporated village, and to do such other acts as shall be necessary or proper for the purpose of supplying the said town and its inhabitants with electricity for lights, heat and power." The conditions upon which this franchise was granted by the town authorities were substantially as follows:

The company was required to restore all streets and public places without unreasonable delay to the same condition in which it found them. The company was required to get a permit from the Highway Commissioners before opening any particular street. The company was forbidden to place wires, poles or other fixtures in any street or public place until their location had been defined by the Highway Commissioners.

The franchise was granted for a period of 25 years, subject to the right of renewal for an additional period of 25 years on a fair revaluation to be determined as follows:

"The company shall within six months before, and at least three months before, the expiration of said first period of 25 years, designate in writing a taxpayer residing within the present limits of the town of Flushing to act as one of a board of three appraisers. Within ten days after receiving written notice of such designation the Mayor of the City of New York, as constituted by chapter 378 of the Laws of 1897, or any subsequent legislation, shall designate in writing a second member of such board, and within ten days after such designation the two so designated shall designate in writing

a third member of such board, who shall be a taxpayer residing within the present limits of the town of Flushing. If such Mayor shall fail to appoint an appraiser within the period above specified, or if the two appraisers desig nated by the company and such Mayor respectively shall fail to designate a third appraiser within the period hereinbefore provided for such designation, then a board of three appraisers, each of whom shall be a taxpayer residing within the present limits of the town of Flushing, shall be designated in writing by such president of an incorporated bank or trust company doing business within the limits of the City of New York, as constituted by chapter 378 of the Laws of 1897, as shall be designated in writing by the company. When a board of appraisers shall have been designated in either of the modes above provided such board shall proceed to make a fair revaluation of said franchise or right, and the determination of such revaluation concurred in by a majority of said board shall be final. The expense of any such revaluation shall be defrayed by the company."

The company was required to adopt from time to time such improvements in its apparatus and appliances as should be necessary to secure "efficient public service at reasonable rates", and it was stipulated that the rates should not at any time "be in excess of the rates at the time generally charged for similar service by corporations engaged in the same business within the limits of the town of Flushing." The company was also required to maintain its conductors and plant in a good and safe condition. It was stipulated that, if the company should fail within a reasonable time to do any act required of it in accordance with the terms of the franchise or which it had been requested to do by the proper public authorities, "then the town of Flushing, or the Commissioners of Highways of said town, or their lawful successors in authority may do such act, and the expense thereof shall be paid by the company."

The company was required to file an acceptance of the franchise in the office of the town clerk on or before December 31, 1897. The company's formal acceptance was filed in December, 1897, but the exact date was not filled in.

B. County Road Franchise in Town of Flushing.— A franchise was granted by the Board of Supervisors of the County of Queens on April 13, 1897, authorizing the Flushing Electric Light and Power Company, its successors and assigns, "to enter upon and open the several county streets, roads, highways, avenues, public parks and places within the town of Flushing, including the villages of Flushing, College Point and Whitestone, for the purpose

of laying, erecting and constructing suitable wires or other conductors, with the necessary poles, pipes or other fixtures in, on, over and under the county streets, roads, etc., as aforesaid, for the purpose of supplying the said town and villages and their inhabitants with electricity for light, heat and power." The consent of the County Engineer was required, however, before the company could occupy any particular street, and the work done by the company in the street was to be done under his direction. Whenever the company disturbed any street it was required to repave it or otherwise put it in proper order without unreasonable delay "to the satisfaction of the County Road Engineer and the Board of Supervisors." The company was required to file a bond for $5,000 to guarantee the performance of its part under the franchise. The $5,000 bond required by this franchise was executed by the company April 19, 1897. The streets covered by this grant are shown on the map of county roads in the Borough of Queens, to which reference has already been made.

4. *Flushing Village Franchises.*— The incorporated village of Flushing now constitutes a portion of Ward 3 of the Borough of Queens.

A. The Dykes grant, 1889.— By resolution of the Board of Trustees of the village of Flushing, adopted November 19, 1889, on the petition of Joseph Dykes, permission was granted to a corporation to be organized by the petitioner and his associates and to be known as the "Flushing Electric Light and Power Company," "to erect and maintain poles and to attach wires thereto for the purpose of furnishing electric light and power" on Broadway between Lawrence Street and the town hall, on Main Street and on Jamaica Avenue between Main Street and Sanford Avenue, upon certain conditions as follows:

The company's poles were to be of a size approved by the village trustees or by a committee or officer designated by them for the purpose, and were to be located at points designated by the trustees or their representative.

The company was to have "a satisfactory system of electric lighting in actual operation" and be prepared to furnish electric light and power upon the streets enumerated on or before March 1, 1890.

The company was required to furnish the village an indemnity bond in the sum of $5,000, with at least two sureties, to save the village harmless from claims for damages.

The company was to comply promptly with all regulations which the Board of Trustees should "deem proper from time to time to impose in the interest of public safety or convenience," and all the company's plant, apparatus and fixtures were to be open at all times to the inspection of the trustees or any one authorized by them.

"This license is granted," said the resolution, "for the purpose of affording to the residents of the village an opportunity of testing the value of the system of electric light and power which said company proposes to introduce; it shall not be deemed to grant to said company the right of permanent occupation of said streets or any of them; it shall be revocable by the Board of Trustees whenever in the judgment of said board the public interest shall demand such revocation, and said company shall within fifteen* after notice of a resolution of said board revoking this license remove from said streets its poles and wires and restore said streets to their proper condition, and in default thereof such work may be* by the village and the said company shall and will pay to said village the cost thereof."

The license was not to take effect until the company had filed the required indemnity bond, together with a certified copy of the resolution of its board of directors accepting the grant upon the conditions prescribed and agreeing to conform to such conditions.

This franchise was superseded to all intents and purposes by the general franchise of 1892 described in the next paragraph. If any rights remain under the original Dykes grant they are now held by the New York and Queens Electric Light and Power Company.

B. Grant of 1892.—By resolution of the Board of Trustees of the village of Flushing, adopted April 5, 1892, the Flushing Electric Light and Power Company was given a general franchise authorizing it to erect and maintain in the streets of the village of Flushing the necessary poles for the support of wires to be used only for the furnishing of electric light and power. The material, style and pattern of the poles were to be approved

* Word omitted from the original record.

by the street committee of the Board of Village Trustees and the poles were to be erected at points designated by the committee. No excavation for the erection of poles was to be commenced without a permit from the Village Trustees. The company's poles and wires were to be repaired and renewed from time to time as the village authorities might "reasonably require for public safety." All the company's wires were to be insulated in a manner to be approved by the village board, and the company was required from time to time to adopt new or improved methods of insulation at the direction of the board, and was to be subject to all lawful regulations and ordinances that might be made from time to time for the public safety. The company was, at the request of the board, to furnish the village such street lights as might be required, at a rate at least 10 per cent less than the lowest rate at which similar lights were furnished to any other consumer with whom the company should contract for furnishing electric light subsequent to the granting of this franchise. The company was also to furnish the village one free light for every 10 lights for which the village paid. It was stipulated that the company should be ready to furnish light for streets, stores and dwellings through Main Street and in Broadway from Flushing Creek to Parsons Avenue by January 1, 1893.

The franchise was granted for a period of 25 years. It was provided, however, that if at any time after the expiration of 10 years' improvements in the methods of electric lighting should have been devised and have come into general use the company might be required on six months' notice to adopt them throughout the village. The company was also required to furnish a $5,000 indemnity bond conditioned upon performing all the requirements of the franchise and saving the city harmless from damage claims growing out of the exercise of the franchise. In case the company violated any of the conditions of the franchise the grant might be revoked by the village board after 30 days' written notice to the company. It was stipulated that at the expiration of the period for which the franchise was granted, or "upon any earlier determination thereof," the company should at its own expense remove all its fixtures from the streets of the village, and in default of doing so should be liable to the village for the ex-

pense of such removal. The company was required to file a written acceptance of the franchise within 30 days. In the last clause of this franchise it was stipulated that upon the filing of the required bond the bond which had theretofore been filed with the village clerk should be void, "except as to any liability which may have then already accrued."

This franchise was superseded in 1897 by the new grant described in the next paragraph.

C. Grant of 1897.— By resolution of the Board of Trustees of the village of Flushing a new franchise was granted January 19, 1897, to the Flushing Electric Light and Power Company, which by its terms superseded the one just described. The new franchise contained practically the same conditions as the grant of 1892, with the exception that the village was to pay for its lights "at the lowest rate at which like lights and service are at the time being furnished by said company to other consumers in the village," instead of getting a 10 per cent discount from this rate. The provision for one free light for every 10 paid for by the village was retained, however. It was stipulated that, under the new franchise, the company should not be released from any claims which had theretofore accrued in favor of the village or any other party as against the grantee. The formal acceptance of this new franchise was filed by the company February 5, 1897, and a $5,000 bond in favor of the village was executed by the company on the same date.

5. *Whitestone Franchise,* 1897.— By resolution of the Board of Trustees of the village of Whitestone, adopted April 8, 1897, a franchise was granted to the Flushing Electric Light and Power Company authorizing the company, its successors and assigns "to erect and maintain in the streets and public places of the village of Whitestone poles, wires and the necessary appurtenances for the purpose of furnishing electric light and power in said village." The general conditions of this franchise are similar to those contained in the one last described granted by the village of Flushing. The material, pattern and location of the electric light poles were to be approved by the street committee of the village. Excavation could not be begun by the company without a special permit. Repairs were to be made when required by

the village for public safety. The company agreed to comply with regulations and ordinances passed to insure the insulation of the wires. The company also agreed to furnish street lights to the village at its lowest rate to other consumers and to maintain one free light for every 10 for which the village paid. The company was to furnish a $5,000 bond and file its acceptance of the franchise, including the conditions attached to it. The franchise resolution was adopted "upon the express condition that in case the company shall not within three months from the date of the passage thereof have caused to be constructed a line of poles from its station in the village of Flushing to the village of Whitestone, and shall not within one month from the completion of said pole line have begun the supply of electric current in said village, then at the option of said Board of Trustees the privileges granted by this resolution may be revoked." It was also agreed that the company should not charge the village for public lighting any higher rates than those specified in a certain statement referred to which the president of the company filed with the village board. The company also agreed not to charge any higher rates for public or private service in the village of Whitestone than it was at the time charging in the village of Flushing. The New York and Queens Electric Light and Power Company, which now operates under this franchise, has been unable to furnish the Public Service Commission with a copy of the statement specifying rates filed by the president of the Flushing Electric Light and Power Company with the village board of the village of Whitestone. A formal acceptance of the Whitestone franchise was filed by the Flushing Electric Light and Power Company, April 13, 1897, and the $5,000 bond required was executed by the company on April 8, 1897. Whitestone is now a part of Ward 3 of the Borough of Queens.

6. *College Point Franchise,* 1897.— By resolution of the Board of Trustees of the village of College Point, adopted April 5, 1897, a franchise was granted to the Flushing Electric Light and Power Company, under which permission was given to the company, its successors and assigns, "to erect and maintain in the streets and public places of the village of College Point, poles, wires and the necessary appurtenances, for the purpose of furnishing electric

light and power in said village." The conditions of this grant in regard to the setting of poles, the installation of wires, the furnishing of public lights, the filing of a bond and the acceptance of the franchise were the same as those contained in the franchises granted by the villages of Flushing and Whitestone just described. In the College Point franchise also a provision was inserted similar to the one in the Whitestone franchise requiring the company to have its pole line constructed within three months and electric current supplied within a month thereafter, or run the risk of having its franchise revoked. It was also agreed that the company should not charge for private or public lighting in the village of College Point "higher rates than it is at the time charging for similar service in the village of Flushing and in the village of Whitestone." A formal acceptance of this franchise was filed by the company April 13, 1897, and a $5,000 bond as required was executed on April 5 of that year. College Point is now a part of Ward 3 of the Borough of Queens.

7. *Town of Jamaica Franchises.*— The former town of Jamaica is now Ward 4 of the Borough of Queens, excluding the incorporated villages of Richmond Hill and Jamaica, over which the town authorities had no jurisdiction for franchise-granting purposes.

The minutes of the board of town officers for December 23, 1892, show that, "on motion of Justice Lester, seconded by Justice Hendrickson, the application of the West Jamaica Electric Light Company to erect poles was granted." A reference to the company's application is found in the minutes of December 31, 1891, but no light is cast upon the specific proposal made by the company. It should be noted that this franchise was granted at a time prior to the incorporation of the village of Richmond Hill, and would therefore cover the territory later included in the village, as well as that portion of the old town of Jamaica covered by later town franchises.

The electric light franchises granted by the town authorities after the incorporation of the village of Richmond Hill were the following:

A. Woodhaven Electric franchise, 1895.— In a report of expert accountants submitted to the comptroller in 1898 relative to outstanding contracts of the former town of Jamaica, it is stated

that, on December 5, 1895, an application was made to the town authorities by the Woodhaven Electric Light Company for a franchise. On December 12, 1895, a franchise was granted to this company by resolution of the Commissioners of Highways, on certain conditions. The company agreed to install an electric plant within the limits of the town and to commence construction by January 15, 1896, to complete the plant by April 1, 1896, and to furnish sixteen-candle-power electric lights by May 1, 1896. The company was to charge fair and reasonable rates, was not to cause any unreasonable obstruction of the streets and was to hold the town harmless from damages or liability for damages arising out of the exercise of the franchise. The company was to use every precaution in making the installations, and streets opened were to be repaved by it without delay and to the satisfaction of the Highway Commissioners. In case the company was delayed by strikes, the elements or legal proceedings its time as specified in the grant was to be extended. This grant was to be operative upon acceptance in writing. The acceptance was filed without date, but no bond furnished by the company was on file in the office of the town clerk. The franchise covered the right to construct wires and conductors with the necessary poles, pipes or other fixtures in, on, over and under the streets and public places of the town outside of the limits of incorporated villages, for the purpose of conducting and distributing electricity for producing light, heat and power.

The Woodhaven Electric Light Company was incorporated November 27, 1895, under Article VI of the Transportation Corporations Law, for the purpose of operating in the town of Jamaica. The amount of its authorized capital stock was $25,000. We have no record to show that this company ever engaged in active operation or that anything was ever done under the Highway Commissioners' franchise of December 12, 1895.

B. Long Island Illuminating Company franchises, 1896.—By resolution of the Town Board of Jamaica, adopted January 10, 1896, and by resolution of the Highway Commissioners of the town of Jamaica, adopted January 16, 1896, the Long Island Illuminating Company was authorized to supply both gas and electricity in the town.

Under the town board grant the company was authorized "to lay, erect and construct suitable wires and other conductors with the necessary poles, pipes or other fixtures in, on, over and under the streets, avenues, lanes, alleys, square and highways, public parks and places, in said town or township, for conducting and distributing electricity, and for using the same for light, heat and power in the said town or township, and the streets, avenues, lanes, alleys, square, highways, public parks and places thereof, and the public and private buildings therein, and for such purposes to generator [sic] and supply electricity, and make, sell or lease all machines, instruments, apparatus and other equipments therefor."

The franchise required that "all trenches or excavations which shall be made by the said company for the purpose of laying its mains or conductors through any street, avenue, alley, lane, squares or highways in said town or township shall be filled in immediately after such conductors or mains shall have been laid, the earth thoroughly rammed as the same is thrown into the trench or excavation, and the pavement replaced in a good and workmanlike manner, according to the regulations of the proper authorities." Although it was specifically stated that the conditions prescribed applied to both gas and electricity, the condition just described is the only one which could in any way affect the operation of an electric light company.

The franchise granted by the Highway Commissioners on January 16th of the same year authorized the company "to lay, erect and construct in such manner and under such reasonable regulations as the board may prescribe suitable wires and other conductors with the necessary poles, pipes or other fixtures in, on, over and under the streets, avenues, public parks and places of the town of Jamaica, outside of the limits of the several incorporated villages therein, for conducting and distributing electricity for producing light, heat and power." This grant was made upon the following conditions:

The company was required to install "a due and proper improved gas and electric plant" within the limits of the town, and to furnish gas or electric light "of due and adequate force, sufficiency and candle power, such candle power to be no less than

16 for every incandescent light furnished by the company." There was to be no unreasonable or unnecessary obstruction of the streets by the company while constructing its works or placing its fixtures. The company was to indemnify the town against damages arising from operations under the franchise. The company was to use the precautions "usually taken by light companies" in the installation, maintenance and renewal of its conductors. The company was to restore any streets opened by it to proper condition without unreasonable delay and to the satisfaction of the Highway Commissioners.

This franchise was evidently patterned after the one granted by the town authorities of Jamaica to the Woodhaven Electric Light Company. A curious evidence of this is found in the "8th" condition, by which it is provided that any delay caused by strikes, the action of the elements, etc., shall not be deemed a part of the time within which the company is required to furnish light, although there is no other reference in the franchise to any limit of time within which the company was to have its plant in operation.

C. Jamaica Electric Light Company franchises, 1896 and 1897. —A franchise was granted October 27, 1896, by the Highway Commissioners of the town of Jamaica, by which the Jamaica Electric Light Company was authorized "to lay, erect and construct in such manner and under such reasonable regulations as the board may prescribe, suitable wires and other conductors, with the necessary poles, pipes or other fixtures in, on, over and under the streets, avenues, public parks and places of the town of Jamaica, outside of the limits of the several incorporated villages therein, for conducting and distributing electricity for producing light, heat and power." This authority was granted upon the following conditions:

The company was to install a "due and proper improved electric plant" within the limits of the town. The company was to commence to furnish electric light by December 15, 1896, unless the time should be extended "by consent." The company was to charge "fair and reasonable rates for electric light." The company was not unnecessarily or unreasonably to obstruct the streets of the town in the construction of its works, erection of its poles

and the stringing of its wires. The company was to agree to indemnify the town for all damages caused by the company's operations. The company was to make use of precautions "usually taken by light companies in all insulations, stringing, renewing and repairing its wires and conductors." Streets opened by the company were to be repaved or otherwise put in proper order without unreasonable delay and to the satisfaction of the Highway Commissioners. It was agreed that for delays caused by strikes, action of the elements or legal proceedings the company should have an extension of time. It was stipulated that the occupation of the streets of the town outside of the several incorporated villages should be under the supervision of the Highway Commissioners.

The franchise was to run "for the term of 45 years only."

It was agreed that, if the company or its successors should cease to operate any of its poles or wires for a period of three months, such poles and wires should be removed from the highways after 60 days' notice from the Highway Commissioners. In case of failure on the part of the company to remove such fixtures when required to do so the work was to be done by the town authorities and the expense of it charged to the company.

Another grant was made to the same company November 26, 1897, by the Town Board. The terms and conditions of this grant were in most respects identical with those of the franchise granted by the Highway Commissioners in the preceding year. The Town Board, however, was substituted for the Highway Commissioners wherever the franchise required the company to act under the direction of the town authorities. The term of the grant was described as being "45 years from the date of the signing of this franchise." The time for the beginning of operation was fixed in the town board grant at December 15, 1897, instead of December 15, 1896, as in the Highway Commissioners' grant.

D. County Road franchise, 1896.— By resolution of the Board of Supervisors of the County of Queens, passed December 8, 1896, the Jamaica Electric Light Company was authorized to occupy the county roads within the town of Jamaica outside of the limits of incorporated villages, for the purpose of conducting and

distributing electricity for light, heat and power. This franchise was granted on substantially the same terms as the franchises granted by the town authorities which we have just described, except that the supervisory control of the company was reserved to the County Road Engineer and the Board of Supervisors.

This franchise is now claimed by the New York and Queens Electric Light and Power Company. The copy of the franchise filed by this company with the Public Service Commission does not show any evidence, however, that the grant was formally accepted by the company.

8. *Village of Jamaica Franchises.*— For the area included in the limits of the former village of Jamaica, the New York and Queens Electric Light and Power Company is unable to show any formal franchise, but claims a franchise by acquiescence. An examination of the minutes and papers of the old village shows that the following electric light franchises and contracts were granted at various times.

A. The American franchise, 1886.— On December 3, 1885, the American Electric Manufacturing Company by H. H. Burgett, its general agent, petitioned the Board of Trustees of the village of Jamaica for "leave to locate and erect such poles and fixtures and to string such wires through and upon the streets and highways of said village as may be necessary to enable it to prosecute in said village the business of electric lighting." This petition was referred to a special committee which on January 7, 1886, reported the form of a franchise to this company. A resolution was introduced making the grant in conformity with the committee's report. The minutes of the village board state that the president of the village "said it was an important question and desired the Board to defer action upon it until another meeting and have a full board present, but the matter was pressed and the resolution unanimously adopted."

The terms of this grant were quite elaborate. Permission was given to the company to erect suitable poles and fixtures on the streets and to string electric wires on the poles, as well as to "carry on the business of lighting the streets, highways, houses, stores and dwellings" in the village. It was expressly stipulated, however, that nothing in the grant should be construed "to bind said village of Jamaica to employ said company." It was also

stipulated that the franchise might be revoked at any time by the village trustees, and that on such revocation the company if called upon to do so should remove all its fixtures and restore the streets to as good condition as they were in at the time the fixtures had been erected. The company was to agree on request of the Board of Trustees to furnish public lights and to supply electric lights to any private parties on request. The committee which drafted the form of franchise evidently intended that the maximum "yearly rental or royalty" for street lights should be fixed, as they left a blank for that purpose. This matter seems, however, to have been overlooked when the franchise was granted. The rates for private lighting were to be "the same in proportion according to the number of the lights furnished as is charged to the village." The village trustees expressly reserved the right to grant similar privileges to other companies. The grantee was to indemnify the village against all damages that might arise through operation under the franchise and to execute such bond as should be deemed necessary by the president and Board of Trustees.

The American Electric Manufacturing Company was incorporated March 30, 1885, for the purpose of doing a general electrical business as already set forth in an earlier section of this report. This company was one of the six to which a grant was made by the old City of New York by the omnibus franchise resolution in effect June 13, 1887. The company's New York franchise is now claimed by the Long Acre Electric Light and Power Company. No evidence has been found that the company ever operated under its Jamaica franchise or transferred it to any other person or company.

B. Jamaica Gas Light Company's Electric franchise, 1887.—Under date of October 6, 1887, the Jamaica Gas Light Company applied to the Board of Village Trustees of Jamaica "for the right to erect suitable poles or other supports on the public streets of said village for the purpose of holding wires and suitable apparatus to light the stores, dwellings, public streets and public dwellings of said village with the electric light." On October 12, 1887, a resolution was passed by the Board of Trustees granting the permission asked for, and another resolution was passed to the effect that the poles and wires be erected under the supervision of the Board of Trustees.

On October 1, 1890, an electric lighting contract was executed between the village of Jamaica and the National Electric Manufacturing and Construction Company. Under this contract the company agreed to erect and maintain for a period of three years a complete electric light plant in the village, and have it in full operation by December 1, 1890. The company agreed to furnish 150 incandescent lights of 32 candle power each and as many more as the village trustees might order from time to time at the rate of $17.50 per annum for each light. The lights were to be located at points designated by the trustees, but the number of lights was to average not less than 15 per mile. The company's lights were to be "kept burning with full volume of light from dark to daylight every night during the said term of three years according to the time table established for lighting the streets of the City of New York." The company also agreed to furnish lights to private parties at the rate of not more than $1.25 a month for service from dark to 11 o'clock, or 1 cent per hour while burning for each incandescent 16-candle-power light. The company agreed to indemnify the village against damages arising from the exercise of the franchise and to keep its wires properly insulated at all times. Poles and wires were to be constructed in such a manner as not to interfere with traffic in the streets, and the company was to furnish necessary space on the cross-arms of its poles for all of the police and fire alarm wires of the village. It was also expressly agreed that the company was "neither to trim or cut down any tree in said streets or public places," except as authorized by the trustees. The company was also required to keep its poles painted. An indemnity bond of $1,000 was to be filed, and the company agreed to furnish additional public lights of less than 32 candle power at the rate of $12 a year for a 16-candle-power light, $14 for a 20-candle-power light, and $16.50 for a 25-candle-power light.

Shortly afterwards the company's bond was filed, as required by the contract, but the Franchise Bureau has been unable to find any record of the incorporation of the National Electric Manufacturing & Construction Company for the purpose of distributing electricity in the state of New York. On June 4, 1891, the company filed a certificate to the effect that it had assigned its contract

to the Jamaica Gas Light Company. On the same date a resolution was adopted by the village trustees notifying the Jamaica Gas Light Company to paint the electric poles.

It appears that electric street lighting was furnished by the Gas Light Company during the next two or three years and that it ceased to operate its electric light plant in 1893, as a contract for public lighting by electricity was in that year awarded to another party. The New York & Queens Electric Light & Power Company makes no claim to the electric lighting franchise granted to the Jamaica Gas Light Company on October 12, 1887. There is no record among the papers filed with the Public Service Commission or in the minutes of the Jamaica village trustees, so far as we have been able to find, showing that the Jamaica Gas Light Company's electric franchise was ever transferred.

C. The Browne franchise, 1887.— On October 6, 1887, Jesse Browne, Jr., petitioned the Board of Trustees of the village of Jamaica for an electric light franchise on behalf of himself and associates. This franchise was granted on October 12th, the same date on which a similar grant was made to the Jamaica Gas Light Company. The only condition of these grants was that the poles and wires erected by the grantees should be under the supervision of the village trustees.

It should be noted, also, that on October 6, 1887, the Thomson-Houston Electric Light Company had asked for a franchise for the purpose of erecting poles and wires necessary for a public lighting service. This company's petition was rejected on the same date that the two franchises last mentioned were granted.

No record of the corporate identity of Jesse Browne, Jr., and his associates and no trace of any construction or operation under the Browne franchise, or of the transfer of this franchise to any other person or company has been found. It should also be noted that on June 5, 1890, H. C. Buckhorn & Company, of 367 Fulton Street, Brooklyn, petitioned for an electric light franchise, and that, on August 7, 1890, a bid for lighting the village with electricity by the Husler Long Incandescent system was received from George B. Ellery. No grant seems to have been made in response to either of these propositions.

D. Jamaica Electric Light Company contracts, 1893 and 1896. — On September 7, 1893, the same day on which the Jamaica Gas

Light Company signified its inability to continue public lighting under its old contract, a bid was received by the Board of Trustees of the village of Jamaica from Mr. John N. Williamson, who offered to furnish electric lights on a three-year contract at the rate of $80 per annum for each four ampere 800-candle-power light, and $100 per annum for each six ampere 1,200-candle light, the lights to be burned on an "every night all night" schedule. If given a five-year contract he offered to furnish 1,200-candle-power lights at the rate of $95 each. In any case the contract was to be for not less than 100 lights, and all lamps were to be suspended over the center of the street.

On September 23, 1893, a resolution was adopted by the village trustees authorizing the execution of a contract with Williamson for lighting the public streets. This contract was executed two days later, September 25th. Under its terms Williamson agreed to erect a complete electric light plant in the village and to have it in full operation not later than December 21, 1893, and to maintain it for a period of three years from that date. He agreed to supply at least 100 arc electric lights of 800 candle power each, and as many more as the village trustees might desire, for lighting the streets, public places and buildings of the village, at the rate of $80 each per annum. These lights were to be kept burning on an all-night every-night schedule. Williamson agreed to erect the poles and put up the wires and appliances necessary for the performance of this contract in the streets and public places of the village, and to maintain them in such a way as not to interfere with public travel or traffic and in such places and in such manner as should be directed by the village trustees. He also agreed to furnish free of cost the necessary space on the cross arms of his poles for all police and fire alarm wires desired by the village. The contractor agreed not to trim or cut down any tree in the public streets except as authorized by the village trustees. He further agreed to keep his poles painted. He was to keep his wires properly insulated and to indemnify the village against damages resulting from the exercise of the contract or from the infringement of any patent right affecting his apparatus, plant or appliances. He was also to execute a $10,000 bond to guarantee the faithful performance of the contract. The village, on the other hand,

agreed "to give and grant" to the contractor "such power and authority as it lawfully may to erect and maintain in and over the said public streets and places, the poles, wires and appliances necessary for the performance of this contract." It was stipulated that, if the contractor failed to furnish the lights provided for by December 21, 1893, or at any time thereafter during the term of the contract, the village trustees might declare the contract void. It was also expressly stated that the contractor "further agrees that at the expiration of this contract, in case the same shall not be renewed, to remove all the poles, wires and appliances which may have been erected in said village in performance thereof from the streets and public places of said village within 90 days after receiving notice to remove the same," from the board of trustees.

It is to be noted that this contract, unlike the contract of 1890, between the village and the National Electric Manufacturing & Construction Company, afterwards assigned to the Jamaica Gas Light Company, makes no reference either by way of conferring a right or by way of imposing an obligation upon the contractor to the furnishing of electric light to private consumers. The Jamaica Electric Light Company was incorporated October 13, 1893, and John N. Williamson became president of the company.

On July 2, 1896, in response to an advertisement, the village trustees received from the Jamaica Electric Light Company a proposal for furnishing electric lights for public purposes for a period of three or five years, at the rate of $77.50 for each 800-candle-power light. On July 16, 1896, a resolution was adopted awarding the contract for lighting the streets to the electric light company "in accordance with their bid." On September 11, 1896, a resolution was passed by the village trustees rescinding the former resolution awarding the contract for street lighting to the Jamaica Electric Light Company. Immediately thereafter, however, a new resolution was adopted to the effect that the "street lighting contract for the period of five years from December, 1896, be and the same is hereby awarded to the Jamaica Electric Light Company, pursuant to the bid heretofore submitted to this board by said company, provided a written contract, satisfactory to said company and this board be properly executed." The contract was finally

executed on September 16, 1896, and on the same date the company executed a $10,000 bond for the benefit of the village. This contract was to run for a period of five years from December 1, 1896. Under this contract the minimum number of lights to be furnished was to be increased to 135, and elaborate provisions were inserted for testing the efficiency of the lights and for deductions from the payments made by the village in case the lights were not up to the standard. The provisions of the contract were substantially the same as those of the contract granted to Williamson three years earlier, except for more elaboration. The paragraph relative to the status of the company's fixtures at the end of the grant was as follows:

"And it is further agreed by and between the said parties that the said party of the second part shall upon determination of this contract remove all its poles, wires and appliances erected by virtue of this contract within ninety days after notice from said trustees so to do, and in default thereof the said trustees are hereby empowered to cause the same to be removed and the expense thereof shall be paid by the said party of the second part or its assigns."

On April 22, 1897, the village trustees received from the company a communication asking for extension privileges in erecting poles and wires in the village. This communication was referred to the electric light committee with instructions to report back at the next regular meeting. No report seems to have been made, however, upon this application, but on November 9, 1897, H. A. Monfort presented a petition for an electric light franchise for a term of 45 years, which was referred to the light committee to report back. On December 29, 1897, the village minutes state that "Counselor Monfort appeared before the board and asked that a franchise be granted to the Jamaica Electric Light Company as per petition as heretofore presented." The committee reported unfavorably and on motion to grant the franchise the vote stood three yeas and three nays. The president thereupon voted "No" and declared the resolution lost. Two days later, December 31, 1897, the last day before the consolidation of the village with the City of New York, an attempt was made to rescind the action taken on December 29th relative to the electric light franchise. The vote on the resolution to rescind again stood three yeas and

three nays. The president again voted "No" and declared the resolution lost.

It appears, therefore, from an examination of the public records, that the Jamaica Electric Light Company never received a franchise for private lighting from the old village of Jamaica. Nothing has been found to indicate that the electric lighting franchise secured by the Jamaica Gas Light Company in 1887 was ever transferred by that company directly or indirectly to the Jamaica Electric Light Company.

9. *Richmond Hill Franchise.*— The minutes of the board of trustees of the village of Richmond Hill show that on December 7, 1896, "a petition from the Jamaica Electric Light Company was read and on motion of Trustee Magee seconded by Trustee Haynes for the purpose of granting permit for the erection of poles on Broadway from the easterly to the westerly line of the village, and was referred to the road committee with power to grant the permit." The minutes of the village trustees for December 14, 1896, recite that "Chairman Magee of the Road Committee, reported as to the permit granted to the Jamaica Electric Light Company and that the poles had been placed on Broadway."

XVII. Corporate History of New York and Queens Electric Light & Power Company, and its Predecessors.

The present operating company in the first four wards of the Borough of Queens is the successor by purchase, merger or otherwise of eight incorporated companies and one partnership, organized for the purpose of doing an electric lighting business in one portion or another of the district covered by the present company's operations. The New York and Queens Electric Light and Power Company was incorporated July 21, 1900, under article VI of the Transportation Corporations Law, and its declared objects were "manufacturing and using electricity for producing light, heat or power and in lighting streets, avenues, public parks and places and public and private buildings of cities, villages and towns within this State, as follows: Within the County of Queens and County of Nassau."

On July 25, 1900, four days after the filing of its certificate of incorporation, this company absorbed by merger the New York

and Queens Gas and Electric Company. Two days later, July 27, 1900, it merged the Jamaica Electric Light Company and the Electric Illuminating and Power Company of Long Island City; and finally, on May 28, 1903, it merged the Long Island Illuminating Company.

The New York and Queens Gas and Electric Company was incorporated June 12, 1899, under Article VI of the Transportation Corporations Law, for the purpose of supplying gas for lighting streets and public and private buildings in the City of New York, and manufacturing and using electricity for light, heat and power in public and private places in that city. It declared its intention to operate in the City of New York within the County of Queens. On June 17, 1899, five days after this company had filed its certificate of incorporation, it absorbed by merger the Newtown Light and Power Company, the New York and Queens Light and Power Company and the Flushing Gas and Electric Light Company. On November 4, 1899, the company acquired by purchase from Thomas W. Stephens the franchise and possibly also some of the physical property formerly held by the Newtown Electric Light and Power Company, a New Jersey corporation, and by the Newtown Electric Light Company, its predecessor, a New York partnership.

The Newtown Electric Light Company was a partnership, composed of three men, among whom John A. Seely was the dominating spirit. The Newtown Electric Light and Power Company was a corporation organized under the laws of the state of New Jersey, May 25, 1892, by Mr. Seely, who held practically all the shares of its capital stock. So far as we have been able to determine by a search among the records in the Secretary of State's office this company never filed with that official a statement of its intention to do an electric lighting business in this state, as was required by the law in the case of a foreign electrical corporation. This company went into a receiver's hands about two years after the date of its incorporation, and its property was sold to individuals in 1894. By various assignments it is claimed that the right to its franchise was finally transferred through Thomas W. Stephens to the New York and Queens Gas and Electric Company on November 4, 1899, as already set forth.

The Newtown Light and Power Company was incorporated May 18, 1895, under the Transportation Corporations Law, for the purpose of generating and supplying electricity for power, light and heat in public and private places. The company proposed to operate in the town of Newtown, Queens County. It was organized by Francis McKenna of Maspeth, who at about the same time received a franchise from the town of Newtown.

The New York and Queens Light and Power Company assumed that name by permission of the Supreme Court April 12, 1898. The company was originally incorporated January 9, 1890, as the Flushing Electric Light and Power Company. It was incorporated under the General Manufacturing Corporations Law of February 17, 1848, and its amendments. It was to operate in the town of Flushing in the County of Queens.

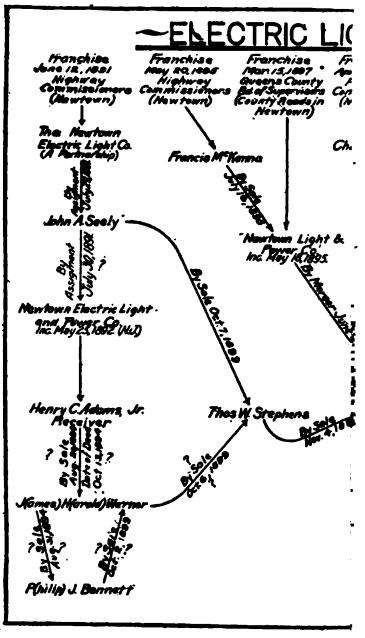
The Flushing Gas and Electric Light Company was incorporated June 11, 1897, under Article VI of the Transportation Corporations Law. It was to operate in the village and town of Flushing, Queens County. There was also a clause in its certificate of incorporation authorizing this company to purchase and hold stocks of any other corporation and to issue its own stocks in exchange therefor. It appears that this company never did an electric lighting business, but succeeded to the gas lighting business of the original Flushing Gas Light Company. About a year after the company's merger into the New York and Queens Gas and Electric Company the latter assigned the Flushing gas business to the Whitestone Gas Company, which in turn assigned it a few days later to the Newtown and Flushing Gas Company, predecessor of the present New York and Queens Gas Company. The testimony and records show that it was only during the brief period between June 17, 1899, and July 6, 1900, that the gas and electric business in Flushing was carried on by one company. Before the earlier date and since the later date the electric lighting business of the New York and Queens Electric Light and Power Company and its predecessors has been kept distinct from the supply of gas.

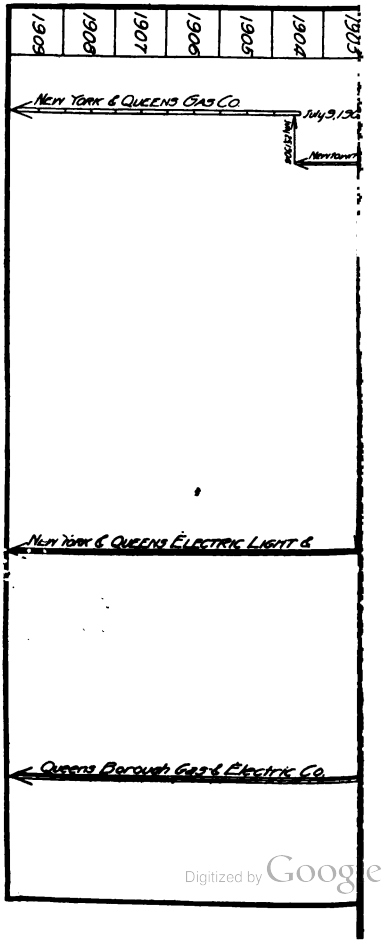
The Jamaica Electric Light Company was incorporated October 13, 1893, under Article VI of the Transportation Corporations Law, for the purpose of manufacturing and using electricity for

light, heat and power in public and private places. Its purpose was to operate in the town of Jamaica, Queens County. This company appears to have been organized to take over the public lighting contract in the village of Jamaica held by John N. Williamson, who was the first president of the company, although not named in the certificate of incorporation as one of the original directors. No record has been found showing that this company succeeded to the franchise of the Jamaica Gas Light Company or permanently acquired any of that company's property except its poles. In view of the fact, however, that the electric lighting business was first carried on in Jamaica by the Jamaica Gas Light Company it may be desirable to note that this company was incorporated June 2, 1856, under the Gas Corporations Act of 1848, for the purpose of supplying and manufacturing lighting gas, and that its declared purpose was to operate in the town of Jamaica, Queens County. This company is still operating, although it is now a subsidiary of the Brooklyn Union Gas Company, and receives from the latter its supply of gas for distribution.

The Long Island Illuminating Company was incorporated December 2, 1895, under Article VI of the Transportation Corporations Law for the purpose of manufacturing and supplying lighting gas and manufacturing and using electricity for light, heat and power in public and private places. Its declared purpose was to operate in the town of Flatlands, Kings County, and the town of Jamaica, and the villages of Richmond Hill and Jamaica in the County of Queens. This company, as already stated, received a franchise for both gas and electricity from the local authorities of the town of Jamaica in January, 1896. To what extent, if any, this company ever engaged in active operation is not clear. This company was leased to the New York and Queens Electric Light and Power Company March 22, 1901, and was merged with the latter May 28, 1903, but the control of the company had been purchased some time before that, possibly several years.

The Electric Illuminating and Power Company of Long Island City was incorporated February 20, 1894, for the purpose of manufacturing and using electricity for light, heat and power in pub-





lic and private places. It was stated as the company's purpose to operate in the city of Long Island City, the town of Newtown or other towns in Queens County. Among the first directors as set forth in the company's certificate of incorporation were Cord Meyer of Maspeth and Edward A. Maher of New York City. The company's capital stock was fixed originally at $50,000, but was increased on September 6, 1895, to $150,000, and again on August 18, 1897, to $500,000. The company was finally merged, on July 27, 1900, into the New York and Queens Electric Light and Power Company. This company's gas franchises were transferred April 10, 1901, by perpetual lease to the Newtown and Flushing Gas Company, predecessor of the New York and Queens Gas Company.

For the purpose of setting forth in a graphical way the history of the companies described in this section the accompanying chart entitled "Corporate History of Electric Light & Power Companies — Borough of Queens," has been prepared.

XVIII. Existing Rights and Obligations of the New York and Queens Company.

So far as our investigations show, the New York and Queens Electric Light and Power Company now owns the following electric light franchises:

(1) Franchise granted by the Common Council of Long Island City December 13, 1894, to the Electric Illuminating and Power Company of Long Island City. This is the only franchise claimed by the present company for the First Ward of the Borough of Queens.

(2) Franchise granted June 12, 1891, by the Highway Commissioners of the town of Newtown to the Newtown Electric Light Company. This franchise, which is claimed through a chain of assignments described in detail in Exhibit V, covers Ward 2 of the Borough of Queens.

(3) Franchise granted May 20, 1895, by the Highway Commissioners of the town of Newtown to Francis McKenna. This franchise, which was acquired through the Newtown Light and Power Company, also covers Ward 2 of the Borough of Queens.

(4) Franchise granted March 15, 1897, by the Board of Supervisors of Queens County to the Newtown Light and Power Company. This franchise covers the old county roads in the town of Newtown, now Ward 2 of the Borough of Queens.

(5) Franchise granted April 28, 1897, by the Highway Commissioners of the town of Newtown to Charles Miller. This grant, which was acquired through the New York and Queens Gas and Electric Company, also covers Ward 2 of the Borough of Queens.

(6) Franchise granted December 29, 1897, by the Highway Commissioners of the town of Flushing, and December 30, 1897, by the Town Board of the town of Flushing, to the Flushing Electric Light and Power Company. This grant, which was acquired through the New York and Queens Gas and Electric Company, covers all that portion of Ward 3 of the Borough of Queens outside of the former incorporated villages of Flushing, Whitestone and College Point.

(7) Franchise granted April 13, 1897, by the Board of Supervisors of the County of Queens to the Flushing Electric Light and Power Company. This grant, which was also acquired through the New York and Queens Gas and Electric Company, covers the old county roads in the town of Flushing, now Ward 3 of the Borough of Queens, including the county roads in the former incorporated villages of Flushing, College Point and Whitestone.

(8) Franchise granted January 19, 1897, by the Board of Trustees of the village of Flushing to the Flushing Electric Light and Power Company. Prior to this date two franchises had been granted by the same authority to the same company. One of these was an experimental grant, dated November 19, 1889, which was followed by a permanent grant on April 2, 1892. These old grants seem to have been superseded, however, by the grant of January 19, 1897. This franchise, which was acquired through the New York and Queens Gas and Electric Company, covers that portion of Ward 3 of the Borough of Queens which was included in the old village of Flushing.

(9) Franchise granted April 5, 1897, by the Board of Trustees of the village of College Point to the Flushing Electric Light and Power Company. This grant, which was acquired through the New York and Queens Gas and Electric Company, covers that portion of Ward 3 of the Borough of Queens formerly included in the village of College Point.

(10) Franchise granted April 8, 1897, by the Board of Trustees of the village of Whitestone to the Flushing Electric Light and Power Company. This grant, which was acquired through the New York and Queens Gas and Electric Company, covers that portion of Ward 3 of the Borough of Queens formerly included in the village of Whitestone.

(11) Franchises granted January 19, 1896, by the Town Board of the town of Jamaica, and January 16, 1896, by the Highway Commissioners of the town of Jamaica, to the Long Island Illuminating Company. These franchises, which were acquired directly through the merger of the grantee, cover that portion of the old town of Jamaica (Ward 4 of the Borough of Queens) outside of the villages of Jamaica and Richmond Hill.

(12) Franchises granted October 27, 1896, by the Highway Commissioners of the town of Jamaica, and November 26, 1897, by the Town Board of the town of Jamaica, to the Jamaica Electric Light Company. These franchises, which were acquired through the merger of the grantee, cover that portion of the old town of Jamaica (Ward 4 of the Borough of Queens) outside of the villages of Jamaica and Richmond Hill.

(13) Franchise granted December 8, 1896, by the Board of Supervisors of Queens County to the Jamaica Electric Light Company. This franchise, which was acquired directly through the merger of the grantee, covers the old county roads of the town of Jamaica (Ward 4 of the Borough of Queens) outside of the incorporated villages of Jamaica and Richmond Hill.

(14) Franchise granted December 7, 1896, by the Board of Trustees of the village of Richmond Hill to the Jamaica Electric Light Company. This grant, which was acquired directly through the merger of the grantee, covers that portion of the street known as Broadway lying within the limits of the old village of Richmond Hill.

All of these franchises are unlimited as to time, except as follows:

The franchises granted December 29 and December 30, 1897, by the local authorities of the town of Flushing were for an original period of 25 years, with the right of renewal for another period of 25 years.

The franchises granted October 27, 1896, and November 26, 1897, by the town authorities of the town of Jamaica to the Jamaica Electric Light Company were for a period of 45 years.

The franchise granted December 8, 1896, by the Board of Supervisors of Queens County for county roads in the town of Jamaica was for 45 years.

Several very interesting points have developed in the investigation and in the testimony at the hearings relative to the rights and obligations of the present operating company under the various franchises held by it. The company's franchise in Long Island City is simple and comprehensive. It imposes no obligation whatever upon the company except that if the locations of its fixtures are deemed prejudicial to the city the fixtures must be removed to other convenient locations designated by the Commissioner of Public Works.

The company claims three general franchises for the Second Ward of the Borough of Queens, and one franchise for the county roads in that district. Of these the old Newtown Electric Light Company (Seely) franchise is limited to "electricity for light only." This grant was to be forfeited unless operation was commenced within one year. No proof has been shown that this requirement was fulfilled, except the fact that a pole line was actually constructed and operation carried on at one time under this franchise. There was no provision in the McKenna and Miller

franchises requiring that operation should be commenced within a certain specified time.

While the validity of the present company's claim to the right to operate under the original Seely (Newtown Electric Light Company) franchise of 1891 might be called into question either on the ground of non-user or on the ground of defective title, or on the ground that the grant was limited to electricity for lighting purposes, the matter is of no practical importance for the reason that the company has other franchises covering the same territory. These franchises are broad in their terms, unlimited as to time and impose practically no obligations upon the company except very meagre ones relative to the opening of the streets. The county road franchise for Newtown required the filing of a $5,000 bond, to be approved by the Board of Supervisors. A similar obligation was required in connection with a number of other of the town and village franchises now held by this company. The records show, however, that these bonds were originally filed as required, but there is no evidence that they have been renewed.

The provisions of the franchises acquired from the town of Flushing and from the several villages located in the town of Flushing were considerably more elaborate than those of the Long Island City and Newtown franchises. In all the villages there was a stipulation that operation should be commenced within a certain specified time. There were also provisions in the village franchises requiring the company to give one free light for every 10 lights paid for by the village.

The College Point and Whitestone franchises provided that public lights should be furnished at the lowest rates at which similar lights and service were furnished to other consumers. The College Point franchise further specified that these rates should not exceed rates charged in the villages of Flushing and Whitestone. The Whitestone franchise provided that these rates should not exceed rates charged in the village of Flushing and should not exceed the rates specified in a statement filed by the president of the company with the village trustees. For private lighting, also, rates were limited to the rates charged in the village of Flushing.

The town of Flushing franchise is perhaps the most unsatisfactory, from the standpoint of the public, of any of those held by the New York and Queens Electric Light and Power Company. I

was granted in the rush hours just preceding the date of consolidation. While the franchise is limited to a period of 25 years, with a right to renewal for 25 years more on a fair revaluation by a board of appraisers, the clause relative to the manner of making the appraisal is unsatisfactory. It provides that the company and the city shall each appoint an appraiser and that these two shall appoint a third, but that if they fail for a period of ten days to agree upon the third appraiser, then the *company* shall have the right to designate the president of some bank or trust company, who shall appoint all three appraisers. There is another queer clause in this franchise to the effect that the rates charged by the company shall not exceed the rates charged for similar service by other companies operating in the town of Flushing. Inasmuch as no other company ever did operate in the town and perhaps never will, the futility of this provision is apparent.

The company has two franchises covering that part of the town of Jamaica outside of the villages of Jamaica and Richmond Hill, acquired through the Jamaica Electric Light Company and the Long Island Illuminating Company respectively. In fact each of these predecessor companies received grants both from the Highway Commissioners and from the Town Board, but the grant from the Town Board is regarded as superfluous, or at least nothing more than confirmatory of the Highway Commissioners' grant. The franchise acquired from the Jamaica Electric Light Company is limited to 45 years, but there is no limitation upon the Long Island Illuminating Company grant. The Jamaica Electric Light Company's grant further provides that if the company's poles are not used for a period of three months they are to be removed within 60 days after notice has been given by the public authorities. It is stipulated in both franchises that the electric light furnished shall be of "due and adequate force, sufficiency and candle power."

Tables V, VI, and VII give a graphical analysis of the provisions of this company's franchises, and the history of their transfer is shown on the accompanying chart* entitled "Electric Light and Power Franchises — New York and Queens Electric Light and Power Company."

*See insert opposite p. 127, *ante*.

TABLE V.— ANALYSIS OF ELECTRIC LIGHT FRANCHISES OF THE NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY IN LONG ISLAND CITY AND NEWTOWN.

Original grantee...	The Newtown Electric Light Co. (a co-partnership).	Francis McKenna.	Newtown Light & Power Co.	Charles Miller...	Electric Illuminating and Power Co. of Long Island City.
Date of franchise..	June 12, 1891...	May 20, 1895...	March 15, 1897..	April 23, 1897...	Dec. 13, 1894.
Local authority....	Highway commissioners.	Highway commissioners.	Board of supervisors.	Highway commissioners.	Common council.
Action by mayor...	.....	.....	.....	.....	Approved.
Territory covered..	Town of Newtown.	Town of Newtown.	County roads in town of Newtown.	Town of Newtown.	Long Island City.
Area.....	33 square miles..	33 square miles..	.....	33 square miles..	7¼ square miles.
Population of district in 1910.	105,219.....	105,219.....	.....	105,219.....	61,763.
Scope of franchise..	Electricity for light only.	Electricity for light, heat or power.	Electricity for light, heat and power.	Electricity for light, heat or power.	Electric lights and power.
When operation required to begin.	Within one year from date of grant.	.....	.....	.....	.....
Poles.....	To be erected so as not to interfere with public travel.	.....	.....	.....	If locations are deemed prejudicial to city, poles to be removed to other convenient locations designated by commissioner of public works.
Excavations in the streets.	.....	Required to restore streets to as good condition as before within reasonable time after opening.	Subject to limitations imposed by county engineer.	Streets opened to be restored to as good condition as before within a reasonable time.	.....
Right to inspect and supervise street work reserved.	"All process construction" under jurisdiction of highway commissioners.	.....	Streets opened must be restored without unreasonable delay to the satisfaction of county engineer and board of supervisors.	.....	.....
Indemnity bond required.	Bond of $5,000 to be filed at county clerk's office.	.....	Bond of $5,000 for faithful performance of franchise, to be approved by board of supervisors.	.....	.....
Grantee's "successors or assigns" recognized.	No.....	Yes.....	Yes.....	Yes.....	No.
Number of times franchise has been transferred.	Eight.....	Three.....	Two.....	Two.....	One.

TABLE VI.— ANALYSIS OF ELECTRIC LIGHT FRANCHISES OF THE NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY IN WARD THREE, BOROUGH OF QUEENS (FLUSHING).

Original grantee...	Flushing Electric Light and Power Co.	Flushing Electric Light and Power Co.	Flushing Electric Light and Power Co.	Flushing Electric Light and Power Co.	Flushing Electric Light and Power Co.
Date of franchise...	Jan. 18, 1897...	April 5, 1897....	April 8, 1897....	April 13, 1897...	Dec. 29 and 30, 1897.
Local authority....	Board of village trustees.	Board of village trustees.	Board of village trustees.	Board of supervisors of Queens county	Highway commissioners Dec. 29, town board, Dec. 30.
Territory covered..	Village of Flushing.	Village of College Point.	Village of Whitestone.	County roads in town of Flushing including villages.	Town of Flushing outside of incorporated villages.
Area.....	1.65 square miles	1.9 square miles.	2.1 square miles..	.....	28.8 square miles
Estimated population of district in 1910.	15,366.....	8,563.....	4,030.....	.....	9,212.
Duration of franchise.	.....	May be revoked after three months if operation has not been begun.	.....	.....	26 years with right to renewal for 25 years on fair revaluation by board of appraisers.
Scope of franchise..	.....	Electric light and power.	Electric light and power.	Electricity for lights, heat and power.	Electricity for lights, heat and power.
When operation required to begin.	.....	Within three months from date of grant.	Pole line to be constructed within three months and current to be supplied within one month thereafter.	.....	.....
Free lighting.....	One free light for every ten lights paid for by the village.	One free light for every ten lights paid for by the village.	One free light for every ten lights paid for by the village.	.....	.....
Maximum rates for public lighting.	.....	Lowest rates at which similar lights and service are furnished to other consumers in village, and not to exceed rates in Flushing and Whitestone.	Lowest rates at which similar lights and service are furnished to other consumers in village, and not to exceed rates in Flushing and not to exceed rates specified in statement filed by president of company.	.....	Not to exceed rates charged for similar service by other companies in town of Flushing.
Maximum rates for private lighting.	.....	No higher rates than are charged for similar service in villages of Flushing and Whitestone.	Not to exceed rates in village of Flushing.	.....	Not to exceed rates charged for similar service by other companies in town of Flushing.

TABLE VI.—ANALYSIS OF ELECTRIC LIGHT PRANCHISES OF THE NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY IN WARD THREE, BOROUGH OF QUEENS (FLUSHING)—(*Continued*).

Obligation to supply electricity.	Must supply street lights as directed by Board of Trustees.	Must supply street lights as directed by Board of Trustees.	Must furnish street lights as directed by Board of Trustees.	.....	.....
Right to regulate service reserved.	Grantee must comply with "lawful regulations and ordinances" adopted for public safety.	Grantee must comply with "lawful regulations and ordinances" adopted for public safety.	Grantee must comply with "lawful regulations and ordinances" adopted for public safety.	.....	Grantee must keep plant in good condition. On failure to obey lawful requirement of town, things may be done by town authorities at grantee's expense.
Poles.....	To be of material and pattern approved by street committee.	Material, pattern and location to be approved by street committee. To be repaired and renewed when required by village authorities for public safety.	Material, pattern and location to be approved by street committee. To be repaired and renewed when required by village authorities for public safety.	.....	Location to be determined by highway commissioners.
Wires.....	Subject to lawful regulations as to insulation.	Subject to regulations of village trustees with reference to insulation.	Subject to regulations of village trustees with reference to insulation.	.....	Location to be determined by highway commissioners.
Excavations in the streets.	Cannot be begun without permit from officer designated by trustees.	Must not be begun without permit from officer designated by trustees.	Must not be begun without permit from officer designated by trustees.	Subject to consent of county engineer.	Streets to be restored to previous condition without unreasonable delay.
Right to inspect and supervise street work reserved.	Poles and wires to be repaired and renewed when reasonably required by village authorities for public safety.	.....	.....	Under direction of county engineer.	Replacing streets to be "satisfactory" to highway commissioners. Streets not to be disturbed without permit from highway commissioners.
Indemnity bond required.	Bond of $5,000 to protect village from damages, to be renewed as required.	Bond for $5,000 with sureties, approved by trustees for performance of franchise conditions and to indemnify village against loss.	Bond for $5,000 with sureties, approved by trustees for performance of franchise conditions and to indemnify village against loss.	Bond for $5,000 to be filed with clerk of board for performance of franchise conditions.	.....
Maintenance of plant.	.....	.....	.....	.....	Grantee must adopt improvements from time to time, necessary for efficient service at reasonable rates, and must maintain its property in good condition.

TABLE VI.— ANALYSIS OF ELECTRIC LIGHT FRANCHISES OF THE NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY IN WARD THREE, BOROUGH OF QUEENS (FLUSHING) —(*Concluded*).

Acceptance of franchise required.	Must be filed in writing within thirty days.	Must be filed in writing with village clerk within thirty days after date of grant.	Must be filed in writing with village clerk within thirty days after date of grant.	.....	To be filed with town clerk by Dec. 31, 1897.
Grantee's "successors or assigns" recognized.	No.....	Yes.....	Yes.....	Yes.....	Yes.
Number of times franchise has been transferred.	Three.....	Three.....	Three.....	Three.....	Three.

TABLE VII.—ANALYSIS OF ELECTRIC LIGHT FRANCHISES OF THE NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY IN WARD FOUR, BOROUGH OF QUEENS (JAMAICA).

Original grantee...	Jamaica Electric Light Co.	Jamaica Electric Light Co.	Jamaica Electric Light Co.	Long Island Illuminating Co.	Long Island Illuminating Co.
Date of franchise...	Oct. 27, 1896, and Nov. 26, 1897.	Dec. 8, 1896....	Dec. 7 and 14, 1896.	Jan. 10, 1896..	Jan. 16, 1896.
Local authority....	Highway commissioners Oct. 27, 1896; town board Nov. 26, 1897.	Board of supervisors of Queens county	Board of village trustees, Richmond Hill.	Town board....	Highway commissioners.
Territory covered..	Town of Jamaica outside villages of Jamaica and Richmond Hill	County roads in town of Jamaica, outside of villages of Jamaica and Richmond Hill	Broadway in village of Richmond Hill.	Town of Jamaica.	Town of Jamaica outside of incorporated villages.
Area.....	52.7 square miles.	.....	.....	52.7 square miles.	52.7 square miles.
Estimated population of district in 1910.	37,245.....	.....	.....	37,245.....	37,245.
Duration of franchise.	45 years from date.	45 years from date.	.....	.....	.....
Scope of franchise..	Electricity for producing light, heat and power.	Electricity for the purpose of light, heat and power.	Erection of poles.	Electricity for light, heat and power.	Electricity for producing light, heat and power.
When operation required to begin...	By Dec. 15, 1896, unless time is extended. Delays caused by strikes, legal proceedings, etc., to be allowed for.	By Dec. 15, 1896, unless time is extended. Delays caused by strikes, legal proceedings, etc., to be allowed for.	.....	.....	.....
Maximum rates for public and private lighting.	Rates shall be "fair and reasonable."	Rates shall be "fair and reasonable."	.....	.....	.....
Obligation to supply electricity.	Must instal a "due and proper improved electric plant" within the town.	Must instal a "due and proper improved electric plant" within the town.	.....	.....	.....
Right to regulate service reserved..	Electric light must be of "due and adequate force, sufficiency and candle power."	Electric light must be of "due and adequate force, sufficiency and candle power."	.....	.....	Electric light must be of "due and adequate force, sufficiency and power;" not less than 19 candle power for every incandescent light.
Poles.....	If not used for three months to be removed within sixty days after notice from town authorities.	If not used for three months to be removed within sixty days after notice from county engineer.	.....	.....	.....

TABLE VII.—ANALYSIS OF ELECTRIC LIGHT FRANCHISES OF THE NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY IN WARD FOUR, BOROUGH OF QUEENS (JAMAICA). —(*Concluded*).

Wires.....	Grantee to use "all and every precaution usually taken by light companies" in insulation, stringing, etc.	Grantee to use "all and every precaution usually taken by light companies" in insulation, stringing, etc.	.....	.....	Grantee must use "every precaution usually taken by like companies" in installation stringing, etc.
Excavations in streets.	Streets not to be unreasonably obstructed; to be replaced in proper order without unreasonable delay.	Subject to supervision of county road engineer, and Board of Supervisors.	.....	Streets to be restored to satisfaction of proper authorities.	No unnecessary obstructions; streets to be replaced in proper order without unreasonable delay.
Right to inspect and supervise street work reserved.	Subject to supervision of highway commissioners.	.....	.....	If grantee fails to replace pavements properly work may be done by public authorities at grantee's expense.	Under supervision of highway commissioners.
Indemnity bond required.	.....	.....	.....	.....	Grantee must "agree to hold the town harmless" from damages under grantee's operations.
Acceptance of franchise required.	Franchise conditioned upon acceptance in writing.	.....	.....	.....	Franchise conditioned upon a written acceptance.
Date of filing acceptance.	Oct. 27, 1896; Nov. 27, 1897.	.....	.....	.....	Jan. 16, 1896.
Grantee's "successors or assigns" recognized.	"Assigns" referred to in one provision.	"Assigns" referred to in one provision.	No.....	No.....	No.
Number of times franchise has been transferred.	One.....	One.....	One.....	One.....	One.

The most interesting questions that have arisen relative to the franchise rights of the New York and Queens Electric Light and Power Company refer to their rights in the old villages of Jamaica and Richmond Hill. The only franchise which the company can show for either of these villages is the grant of December 7, 1896, authorizing the Jamaica Electric Light Company to erect poles on Broadway in Richmond Hill. The history of the franchises and public lighting contracts of the village of Jamaica has already been given in detail. The company furnished none of this information, either in the documents filed with the Commission or in the testimony at the hearings. In

the absence of definite franchise grants the company maintained first that it enjoyed *franchises by acquiescence;* second, that most of the streets in Richmond Hill and a very large number of those in Jamaica were private streets, upon which it was operating on the strength of the consents of the property owners; and third, that in any case Broadway and the county roads constituted the principal thoroughfares of the two villages and were covered by definite grants.

In regard to the third claim, it is to be noted that the grant of the Board of Supervisors of December 8, 1896, for county roads in the town of Jamaica was peculiar in that it was expressly limited to the county roads outside of the incorporated villages.

In regard to the second claim, it should be said that the Bureau of Franchises has made a special investigation into the status of the streets in the two villages, and while the complete records which are now being collected for the Topographical Bureau of the Borough of Queens are not as yet available the evidence found by the Bureau demonstrates that probably three-fourths of the streets in both villages were public streets prior to the date of consolidation, and were undoubtedly public streets at the time when the electric light lines were established in them. On the supposition, however, that a company established its lines in a private street which was afterwards dedicated to public use the question would arise as to whether or not the company would thereupon require a franchise from the public authorities. In discussing this point in reference to the operations of the Bowery Bay Electric Light and Power Company in private streets at North Beach, Mr. Matthewson, counsel for the New York and Queens Electric Light and Power Company, gave his views at pages 1590 and 1591 of the printed record, as follows:

"Q. Supposing that the companies are operating crossing private streets, and furnishing various parties with electric lights, would you contest their right to do so in the absence of having public franchise? A. Do you mean would my company contest their right?

"Q. Yes. Would you claim that they have no right to operate, providing they did not cross public streets? A. Oh, no. They have a right to operate on private property. I think under the charter from the state, any electric company has a right to run an individual plant on private property. It only requires, in my view, a public franchise in case it crosses public streets, or endeavors to use public places in any way. That is our view.

"Q. In case these streets were opened, dedicated, and made public streets — A. (Interrupting) They could not then be crossed.

"Q. If they were already crossed; if the company had its wires already running across those streets, would the mere fact of the dedication of those streets require them to remove their wires, or to get a franchise? A. I think so. I think so. It was decided in the Deehan case, I think, that a grant of franchise to a company to use the streets of a village or town — I think it was a town in that case — was sufficient to authorize the use of the streets of a village, after a village was carved out of that territory, and even streets which were opened up by the village afterwards, and dedicated, although they did not exist originally, or when the village was carved out. And, turning that about, I would suppose that when a street became a public street, and was dedicated to the city, that it would require a franchise then to use it, although that is a good deal of a question to answer as to wires which have been actually set and poles placed."

This testimony referred to the possible claims of a rival company. When the same question was brought up at a later point where the rights of Mr. Matthewson's own company were involved in Richmond Hill, he testified as follows (pages 1605 and 1606):

"Q. I suppose, then, if these streets were later dedicated to the public, and became public streets officially, the same question would arise that arose in connection with the rights of the Bowery Bay Electric Light & Power Company, and the North Beach Electric Light & Power Company, that I asked about a few months ago— A. Yes. The same question would arise, and it would be a question requiring examination, which would prevent me expressing a definite opinion offhand. I may say in the case of the Richmond Gas Company, settled in *People ex rel. Richmond Gas Company* against *Cromwell*, 89 App. Div., I think, it was held substantially that acquiescence in the general exercise of power, exercise of use of the streets of municipal towns in that case, resulted in a general franchise, so that the public authorities could even be mandamused to give authority to enter streets which had not up to that time been entered by the company.

"Q. That was an Appellate Division case, Mr. Matthewson? A. Yes, sir.

"Q. It never was appealed? A. No; it was never appealed. It seems it was accepted by the city, and I think by everybody."

The company's first claim relative to acquiescence is most interesting, especially in the light of the fact, of which, to all appearances, Mr. Thomas, manager of the company, and Mr. Matthewson were totally ignorant, that the company made a strenuous effort to secure a franchise from the village trustees

of Jamaica just prior to consolidation, and that its application was twice rejected. The acquiescence claim was first presented to the Commission in a letter from Mr. Thomas dated April 20, 1908, the body of which is as follows:

"Referring to blue prints of franchise rights of the New York and Queens Electric Light and Power Company in the Borough of Queens, we find and present herewith a written consent in the village of Richmond Hill in Jamaica.

"This, and also the consents specified in the blue prints, cover only 'written' consents, so to speak, of the municipal authorities; but the statute does not require that the consent shall be 'written,' or by formal resolution, or evidenced in any other special manner, and an oral consent or one evidenced by acquiescence by the municipal authorities in the placing and operation of conductors in the streets is equally good (*People ex rel. Richmond Gas Co.* v. *Cromwell*, 89 A. D. 291; *Matter of Attorney General*, 56 Misc. 49, since affirmed by Appellate Division).

"In other words, the authorities of a village or town can not stand by and permit without objection the expenditure of great sums of money in establishing and equipping a plant and distribution system through its streets for the service and convenience of the public, and then render the investment valueless by declaring that their 'consent' is not evidenced in some written or other special form. The municipality in question is estopped in such case from denying the consent, in view of the obvious assent and acquiescence of the authorities thereof.

"The New York and Queens Electric Light and Power Company is operating in every section of the first four wards of the Borough of Queens, not only under the formal resolutions and consents submitted to the Public Service Commission, but also under the consents based on acquiescence by the original towns and villages of the borough. Thus the Jamaica Electric Light Company, our predecessor in interest, built and operated its sole plant within the limits of Jamaica village, and established its poles and wires and furnished electricity throughout that village up to the time of its incorporation into the City of New York, with the certain knowledge of the Board of Trustees and every other officer of the village of Jamaica, and with their complete assent, acquiescence and encouragement. There never has been the slightest question or objection raised to our operation in said village, either by the village of Jamaica originally or by the City of New York since the village of Jamaica was incorporated therein. Indeed, the City of New York has since constantly contracted and now is under contract with us to furnish public light in the streets and buildings of that former village.

"We present this statement in order that the blue print may be considered in its true relation, and that it may not be overlooked that such a schedule is not the true measure of the rights and franchises of this company (or probably any other company to which such blue print might relate)."

On pages 1609 to 1611 of the printed record the following testimony was given by Mr. Matthewson in regard to the company's claims in the village of Jamaica:

"Q. Take the village of Jamaica; how about the village of Jamaica? A. As I say, the Jamaica Electric Light Company was incorporated in 1893. It was incorporated at the invitation and solicitation of people there who wanted electric light, and our people put their money up and put their property into the streets, and they furnished all the public lighting from that time down, and furnished all the private lighting, and everybody wanted it done, and it was an acquiescence of a very pronounced and ungetawayable kind, and it never was thought of as anything that could be questioned, and I do not know that it could be questioned now. We supposed that it was so firmly fixed that nobody could question it, and nobody there does complain of it; never heard of it. And it would be a very great hardship if it were held that we did not have a right now. As to why we should not conform to that, if you please, by getting a written franchise, is something that we had not considered, because we thought that the situation gave us the consent; that all the authorities that had anything to say had consented. Every village trustee there had the work under his nose every morning, and they paid us for their public lighting right along, year after year. And it is as clean and clear a consent as you could ever find, without formal action of a Board.

"Q. What is the objection to going and getting a franchise? A. I suppose they would want to limit us to 25 years, and I suppose they would want to charge us something great for it. Do we not deliver free lights over there now, one in ten, Mr. Thomas?

"Mr. Thomas: No; I think not.

"The Witness: No. It is another territory. That is the only objection why we should not get it. Why should we go and pay something for something that we have already got?

"Mr. Thomas: The old plant was right in the heart of the village.

"The Witness: Yes. Right there; right in the village, and operating, and in fact it got to be finally, after the Greater City was formed some years later — it got to be so big a plant that they said 'Here, you are making an awful lot of smoke. Can you not get this plant away and furnish us from your Astoria plant?' and we said, 'Yes, we can enlarge that.' And that was largely enlarged. Before getting rid of that smoke nuisance, our people were called before the Magistrate once or twice in regard to it."

XIX. Electric Light Franchises Granted for Ward 5, Borough of Queens.

Prior to January 1, 1898, this territory was a portion of the town of Hempstead, and included three incorporated villages, Far Rockaway (incorporated September 19, 1888), Arverne-by-the-Sea (incorporated September 9, 1893) and Rockaway Beach

(incorporated June 11, 1897). The Queens Borough Gas and Electric Company is the sole operating company for both gas and electricity throughout this district. All franchises covering particular portions or all of this territory granted by the various local authorities from time to time have been acquired or are claimed by the present operating company, with the exception of the Seaside franchise and the Wainwright-Hammell franchises granted by the village of Rockaway Beach.

1. *Town of Hempstead Franchises.*

A. The Taylor franchise, 1887.— On November 21, 1887, a franchise was granted by the town officers of the town of Hempstead to James R. Taylor. This franchise was granted at a joint meeting of the Board of Town Auditors and the Board of Highway Commissioners, and provided that Taylor, his successors and assigns "shall have the privilege of laying, erecting and constructing suitable wires and other conductors with the necessary poles, pipes and other fixtures, still in, on and over, *but not under the traveled portion of any highway,* the streets, avenues, public parks and places of said Rockaway Beach, for the purpose of conducting and distributing electricity for lighting said Rockaway Beach and for lighting the streets, avenues, public parks and places, public and private dwellings, buildings and public and private places of said Rockaway Beach from Norton's Bridge to the western end of said Rockaway Beach, including Arverne and Oceanus."

There is a note at the end of the grant stating that the words "but not under the traveled portion of any highway" were interlined before the execution of the document, in place of the words "for the term of fifty years from the date hereof," erased.

This franchise, which is now claimed by the Queens Borough Gas and Electric Company, covers all of that part of the Fifth Ward of the Borough of Queens not formerly included within the limits of the village of Far Rockaway.

B. The Myers franchise, 1889.— In a communication dated April 8, 1889, addressed to "The Town Authorities of the Town of Hempstead, the Supervisor, Justices of the Peace and the Commissioners of Highways of said Town," S. R. Myers, of Oceanus, applied for permission to erect and maintain an electric

light and steam power plant, wire and circuit at Rockaway Beach from Norton's Bridge to the west end of the beach, for the purpose of distributing electricity for lighting "on more liberal terms than are at the present time obtainable." On May 2, 1889, at a joint session of the town officers a franchise was granted to Samuel R. Myers, his successors and assigns pursuant to this application. By this franchise the grantees were given the privilege of "laying, erecting and constructing suitable wires and other conductors with the necessary poles, pipes and other fixtures, in, on and over (but not under or over the traveled portion of any highway) the streets, avenues, public parks and places of said Rockaway Beach for the purpose of conducting and distributing electricity for lighting said Rockaway Beach, and for lighting the streets, avenues, public parks and places, public and private dwellings and buildings and public and private places in said Rockaway Beach, from Norton's Bridge to the western end of said Rockaway Beach, including Arverne and Oceanus, under more liberal terms than are now charged for the same, poles to be located subject to the approval of the Highway Commissioners, plant to be erected, and ready to furnish electric light in any part of the within territory required within eighteen (18) months from the date hereof."

2. *Far Rockaway Village Franchises.*— The village of Far Rockaway comprised the eastern portion of the present Fifth Ward of the Borough of Queens.

A. The Rockaway Electric Light Company franchise, 1891.— By resolution of the board of village trustees a franchise was granted May 12, 1891, to the Rockaway Electric Light Company. The company had originally applied for a franchise for both gas and electricity. Two other parties had also applied for franchises at the same time. After the applications had been read and the parties heard, the village board went into executive session, and agreed that it was not advisable to grant a gas franchise at that time, and further agreed that the electric light franchise should be given to the Rockaway Electric Light Company. Thereupon Mr. John A. Seely, representing the company, withdrew the application for gas and the village board passed a resolution grant-

ing an electric light franchise "but excluded motive power on public streets or public places." The grant was made subject also to the following conditions:

"The company supply electric light to any person or corporation deserving same, on or before July 1, '91, that a bond be given in the am't of $5,000 as liquidated damages. to be filed with the Clerk or the President, and approved of by the Trustees or President before franchise is granted and that agreement or franchise be approved of by the President before going into effect.

"Set poles in all public places under direction of the Trustees or proper Committee of Board, leave streets in good condition and to give continuous service throughout the year, in event of village entering into contract for lighting streets."

No evidence is found in the documents filed with the Public Service Commission to show that the $5,000 bond required under this franchise was ever filed with the village authorities, or that the franchise itself was approved by the president before going into effect.

B. The Citizens' Lighting Company franchise, 1892.—By resolution of the Board of Trustees of the village of Far Rockaway, adopted April 6, 1892, and said to have been amended at a later date, a franchise was granted to the Citizens' Lighting Company. Under this grant the company was authorized "to erect poles and lay pipes, for the purpose of supplying and distributing electricity for lighting purposes in the village of Far Rockaway in such streets of said village as may from time to time be necessary." Several conditions were attached to this franchise. The company's poles were to be so located as not to interfere with the safety or convenience of the traveling public. Poles were to be set at least five feet deep and to stand at least 25 feet in the air. Wherever lamps were to be hung across the street the poles were to stand 30 feet in the air. Shade trees were not to be trimmed or injured without the consent of the owners, and poles were not to be placed in locations to which the property owners objected. The use of one cross arm on the poles for the maintenance of village wires for the police and fire departments was reserved free of charge.

The company was also authorized by this grant "to lay pipes, conduits and such other apparatus as may be needful for the conduct of its business beneath the surface of such streets as may

have been designated by the trustees of said village" upon the following conditions. The streets were not to be opened for the purpose "of originally laying any such pipes, conduits or wires, without first notifying the village trustees." The company was required to exercise reasonable care in laying and maintaining its conduits and wires, and to comply with the laws of the state and the ordinances of the village relating thereto. The wires for conveying electricity or the conduits containing the wires were to be laid "at the greatest practicable distance from the outside of any water, gas or other pipes now laid down." The company was not to disturb or interfere with water, gas or other pipes or public or private sewers in the streets, and was required to "leave all streets in which they shall have laid their conduits in as good condition and paved with the same material as before their disturbance for the purpose herein related, to refill and repair whenever any trench may sink below the proper level." The company was not to open trenches in excess of 200 feet in any one place at any one time, nor to open them in such manner as wholly to prevent public travel.

It was further stipulated that the company should be ready to supply electric light on or before June 1, 1892, and that the company would furnish to the village arc lights of 1,200 candle-power at a rate not to exceed $110 each per year for not less than 30 lights. If the village required more lights it was to get them "at not exceeding the same price." The company also agreed to furnish the village, on request, incandescent light of 50 candle power at a price not exceeding $30 per annum, and agreed to furnish incandescent lights of 16 candle power for household purposes and generally for its consumers at a rate not in excess of $1 per month per light up to 11 o'clock P. M. and not to exceed $1.25 up to 1 o'clock A. M., and for all night not to exceed $1.50 per month. The public lighting service was to be continuous all the year and all night "according to the table adopted by the authorities of the City of New York relative to electric lighting, or as directed and voted upon by the people of the village of Far Rockaway."

The company was required to leave all public streets and places in as good condition as it found them. It was stipulated that the prices mentioned for private consumption should apply to con-

sumers subscribing by the year. In case private consumers wished electric light for less than a year the company was authorized to charge a rate not exceeding 30 per cent in addition to the prices already mentioned.

The grant was conditional upon its being accepted by the company in writing under the company's seal before any work under the franchise should be commenced, and the filing by the company of an indemnity bond in the sum of $5,000 to guarantee that the conditions of the franchise would be carried out by the company and that electric light would be supplied by June 1, 1892. The franchise was limited to "lighting purposes only," and it was specifically stated that it should "not include motive power in any of the public streets and places in said village."

The franchise was formally accepted by Thomas Henderson, president, and Smith N. Decker, secretary, of the Citizens' Lighting Company on the same date on which it was granted, April 6, 1892. Later, at a date which is not given, it is claimed that the franchise was amended so as to include the right and obligation on the part of the company to furnish electricity for heat and power as well as for light, with the specific proviso that nothing in the grant should "authorize the laying of street railroad tracks."

In support of the claim that the franchise was amended as stated, the Queens Borough Gas and Electric Company has filed with the Public Service Commission an affidavit of Lewis B. Sharp, dated June 23, 1909, in which he states that he is superintendent of the Queens Borough Gas and Electric Company and was general superintendent of the Citizens' Lighting Company from August, 1892, to October, 1894, and again from September, 1897, to March, 1898, when he became general superintendent of the Queens Borough Electric Light and Power Company, successor of the Citizens' Company in operation at Far Rockaway. He states that at some time previous to October, 1894, he was present at a meeting of the village trustees, at which a resolution was passed amending the franchise of April 6, 1892, so as to extend it to cover heat and power, and to prohibit the company from the laying of street railroad tracks. He further states that in the month of June, 1898, in the Newtown town hall he made a copy of this amending resolution, which was then among the official

papers of the former village of Far Rockaway and was in possession of the examiners from the Finance Department of the City of New York, who were then going over the records of the former villages and towns of Queens County.

3. *Rockaway Beach Village Franchises.*— The village of Rockaway Beach, having been incorporated in 1897, several years subsequent to the grant of the Taylor and Myers franchises by the town authorities of the town of Hempstead, was, of course, subject to those grants.

A. The Seaside franchise, 1897.—At a meeting of the Board of Trustees of the village of Rockaway Beach, August 25, 1897, a resolution offered by President J. W. Wainwright was unanimously carried, by which the trustees granted and gave "the right and privilege to the Seaside Amusement Company to erect and maintain electric light poles for operating and supplying electric lights on the following streets: Henry Street, Remsen Avenue, Wainwright Place, Conway Street and Washington Avenue between Conway Street and Henry Street."

B. The Van Wyck Rossiter franchise and contract, 1897.—On August 31, 1897, the Board of Trustees of the village of Rockaway Beach adopted a resolution giving consent "to Van Wyck Rossiter or his assigns or such corporation as he and such persons as may be associated with him shall organize for such purpose, to lay, erect and construct suitable wires or other conductors with the necessary poles, pipes or other fixtures in, on, over and under the public streets, avenues and public parks of the village of Rockaway Beach in such a manner and under such reasonable regulations as may be from time to time prescribed by the municipal authorities of said village for the purpose of furnishing electric lights and power for stationary motors in private or public buildings, and for no other purpose." It was specifically provided that the grant should not include any right or privileges for traction purposes, and should not in any way "effect" any right or privileges "heretofore given or hereafter to be given."

C. The Wainwright-Hammell franchises, 1897.—At the meeting of the Board of Trustees of the village of Rockaway Beach on December 31, 1897, the last day before consolidation with the City of New York, a resolution was unanimously adopted to

the effect that consent "be given to William G. Wainwright of Rockaway Beach, or his assigns, or to such corporations as he and such persons as may be associated with him shall organize for such purpose, to lay, erect and construct suitable wires or other conductors with the necessary poles, pipes or other fixtures in, on, over and under the public streets, avenues and public parks of the village of Rockaway Beach, in such a manner and under such reasonable regulations as may from time to time be prescribed by the municipal authorities of said village, for the purpose of furnishing electric lights and power for stationary motors in private and public buildings west of Holland Avenue." At the same meeting another resolution was unanimously passed granting a similar consent to Louis Hammell of Rockaway Beach, covering the streets, avenues and public parks east of Holland Avenue within the village limits.

It is believed that the franchise granted to William G. Wainwright is now held by the Seaside Electric Light, Heat and Power Company, which was incorporated July 9, 1900, with three Wainwrights as members of its first board of directors. This company operated to a limited extent some years ago, but is now dormant and has failed to file its documents with the Public Service Commission.

4. *Board of Supervisors Franchise,* 1897.— By resolution of the Board of Supervisors of the County of Queens, adopted September 28, 1897, consent was given to Van Wyck Rossiter or his assigns "for the purpose of furnishing current for electric light and power purposes, to lay, erect, construct and maintain suitable wires and other conductors in, on, over and under such part of the county road known as the Boulevard or continuations thereof as is situated within the limits of the town of Hempstead." The work of construction was to be done under the direction of the County Engineer and subject to such reasonable regulations as might be prescribed from time to time by the Board of Supervisors. On account of the changes in the names of streets in the fifth ward it was impossible to identify from the records at hand, throughout its entire course, the county road described as the Boulevard in this franchise. At our request, however, the counsel for the Queens Borough Gas and Electric Company supplied a descrip-

tion of this road in a letter dated September 24, 1909. He states that as the company understands it the road followed the street which is still known as the Boulevard, from Rockaway Park to Norton's Bridge at the westerly boundary of Far Rockaway, and from that point on followed Atlantic Avenue, Sea View Avenue, Cornaga Avenue and Broadway to the Merrick Road in the present town of Hempstead.

XX. Corporate History of the Queens Borough Gas and Electric Company, and Its Predecessors.

The Queens Borough Gas and Electric Company, which is at the present time the sole operating company for both gas and electricity in the Fifth Ward of the Borough of Queens, and also operates in the present town of Hempstead, Nassau County, was incorporated May 29, 1902, under Article VI of the Transportation Corporations Law. Its declared objects were "manufacturing and supplying gas for lighting the streets and public and private buildings of cities, villages and towns in this state, and for manufacturing and using electricity for producing light, heat or power, and in lighting streets, avenues, public parks and places and public and private buildings of cities, villages and towns within this state, and to exercise the power conferred by law upon corporations formed for the purposes and objects aforesaid." The certificate of incorporation also gave the company authority "to purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations." The amount of its capital stock was fixed at $2,000,000. Among the directors for the first year appear the names of John L. Lockwood, Jr., and Lewis L. Delafield.

By a certificate filed in the office of the Secretary of State, September 19, 1902, this company merged the Town of Hempstead Gas and Electric Company and the Queens Borough Electric Light and Power Company. The former had been incorporated May 20, 1882, under the Gas Corporations Law of 1848, and its amendments. The amount of its capital stock was fixed at $125,000. This company claims as the basis of its gas business

a franchise granted by the town of Hempstead, June 15, 1880, to the Rockaway Gas Light Company, and another granted December 15, 1883, also by the town of Hempstead, to John C. Lockwood. The Rockaway Gas Light Company was incorporated February 19, 1880, for the purpose of manufacturing and selling lighting gas at Rockaway Beach and at other points in the town of Hempstead. It is claimed that these gas franchises were acquired by the Town of Hempstead Gas and Electric Company, one of the present company's predecessors. However this may be, it is not claimed that any of the electric lighting privileges of the present operating company within the City of New York were derived through the Town of Hempstead Gas and Electric Company.

The Queens Borough Electric Light and Power Company, which, as already stated, was absorbed by merger by the present company on September 19, 1902, had been incorporated February 28, 1898, for the purpose of manufacturing and supplying both gas and electricity for public and private use in cities, villages and towns of the state, in the counties of Kings, Queens and Suffolk. The amount of the company's capital stock was $250,000, and on its first Board of Directors appear the names of Van Wyck Rossiter, C. L. Rossiter, T. S. Williams and others. This company sold its property and franchises to the Queens Borough Gas and Electric Company on July 1, 1902, nearly three months prior to the date of merger. This company had acquired by purchase on June 29, 1898, the property and franchises of the Citizens' Lighting Company, of which Van Wyck Rossiter was president, and also during the same year certain electric lighting rights held by Van Wyck Rossiter personally. A portion of Rossiter's rights were obtained by purchase on July 26, 1897, from Philip J. Bennett, receiver of the Rockaway Electric Light Company.

The Citizens' Lighting Company, of which mention has just been made, was incorporated March 22, 1892, for the purpose of manufacturing and using electricity for producing light, heat or power and in lighting streets, avenues, public parks and places and public and private buildings in the town of Hempstead. The amount of the company's capital stock was fixed at $25,000. It appears to have been an operating company in Far Rockaway

probably until the date of the sale of all its property and franchises, June 29, 1898, to the Queens Borough Electric Light and Power Company. The Citizens' Lighting Company seems never to have been merged by any other company, but in the deed of sale to the Queens Borough Electric Light and Power Company it is stated that "all easements, privileges, franchises and rights both corporate and municipal of every kind" are transferred to the purchaser.

The Rockaway Electric Light Company appears to have been the first company that actually supplied electricity in the Rockaways. It was incorporated for a period of 30 years by John A. Seely and others, under the general laws of the State of New Jersey, by an instrument dated May 8, 1890. On December 31, 1892, the company filed a copy of its certificate of incorporation in the office of the Secretary of State at Albany, with a statement of its intention to do business within the State of New York. This statement was filed by James A. Taylor, treasurer of the company. It appears that the company had already, prior to the date of filing this statement in Albany, been operating in the Rockaways. It had secured a franchise from the village trustees of Far Rockaway on May 12, 1891, and it is claimed by the present company that it had secured the franchise for the Rockaway Beach District granted to Samuel R. Myers on May 2, 1889. This company executed a mortgage to the Central Trust Company of New York, dated November 1, 1890, to secure the issue of $75,000 of six per cent first mortgage bonds. It appears from the documents filed with the Public Service Commission that on June 30, 1898, when Van Wyck Rossiter agreed to transfer certain property to the Queens Borough Electric Light and Power Company, he claimed to be the owner of at least 80 of the first mortgage bonds of the Rockaway Electric Light Company. According to the testimony of Mr. Carleton Macy, president of the Queens Borough Gas and Electric Company, and the statement of Mr. Eugene D. Hawkins, counsel for the company, these bonds are now owned by the present operating company and the mortgage executed to secure them has never been foreclosed. It appears, therefore, that the Rockaway Electric Light Company

still has independent corporate existence although all its former assets are in the possession of the present operating company.

For a graphic representation of the relationship between the various companies which have contributed to the rights and franchises of the Queens Borough Gas and Electric Company, reference should be made to the chart entitled "Corporate History of Electric Light and Power Companies — Borough of Queens," accompanying a preceding section of this report.*

XXI. Existing Rights and Obligations of the Queens Borough Company.

It can readily be inferred from what has already been said about this company's corporate history that the present status of some of its franchises is somewhat in doubt. The several electric franchises claimed by the company are as follows:

(1) Franchise granted by the town officers of the town of Hempstead November 21, 1887, to James R. Taylor, covering all of the present Fifth Ward except the former village of Far Rockaway.

(2) Franchise granted by the town officers of the town of Hempstead May 2, 1889, to Samuel R. Myers, covering the same territory as the preceding.

(3) Franchise granted May 12, 1891, by the Board of Trustees of the village of Far Rockaway to the Rockaway Electric Light Company.

(4) Franchise granted April 6, 1892, and amended at a later date, by the Board of Trustees of the village of Far Rockaway to the Citizens' Lighting Company.

(5) Franchise granted August 31, 1897, by the Board of Trustees of the village of Rockaway Beach to Van Wyck Rossiter.

(6) Franchise granted September 28, 1897, by the Board of Supervisors of Queens County to Van Wyck Rossiter. This franchise was for the county road known as the Boulevard.

The Taylor franchise covered electricity for lighting, was unlimited as to time and provided only that the company's fixtures should not be placed under the traveled portion of any highway. The Queens Borough Gas and Electric Company was unable to submit any documentary evidence whatever to show that it owned this franchise.

*See insert opposite p. 127, *ante*.

The Myers franchise was similar to the Taylor franchise in its terms, but the grantee was placed under certain additional obligations, including the requirement that he should begin operations within 18 months, that he should supply electricity on more liberal terms than those being charged, that he must be ready to furnish electricity in any portion of the territory covered by the grant, and that his poles must be located subject to the approval of the Highway Commissioners. In the documents furnished by the company there is a bill of sale from Philip J. Bennett, receiver for the Rockaway Electric Light Company, purporting to sell to Van Wyck Rossiter all of Bennett's interest as receiver in " a certain franchise for lighting the district of Rockaway Beach * * *, said franchise bearing date May 2, 1889." The date given is the date of the Myers franchise, but no documentary evidence was produced by the company to show that the Myers grant ever became the property of the Rockaway Electric Light Company.

Granting that the Rockaway Electric Light Company had title to the Myers franchise and that it was properly transferred by Bennett as receiver to Rossiter by the deed of sale dated July 26, 1897, it appears that Rossiter entered into a contract with the Queens Borough Electric Light and Power Company under date of June 30, 1898, by which he agreed to transfer this franchise. The Queens Borough Gas and Electric Company was unable, however, to furnish the Commission a copy of the actual transfer which it is claimed took place. In lieu of this the company furnished a confirmatory or quit-claim deed, executed by Rossiter on May 28, 1908, more than a year after the Commission had called the company's attention to the apparent defects in its title to this franchise.

Whatever rights passed to the Queens Borough Electric Light and Power Company were unquestionably transferred by sale and merger to the Queens Borough Gas and Electric Company.

The Far Rockaway franchise of May 12, 1891, granted to the Rockaway Electric Light Company, was certainly not included in the sale by Philip J. Bennett, receiver, to Van Wyck Rossiter, and no evidence whatever has been presented by the present operating

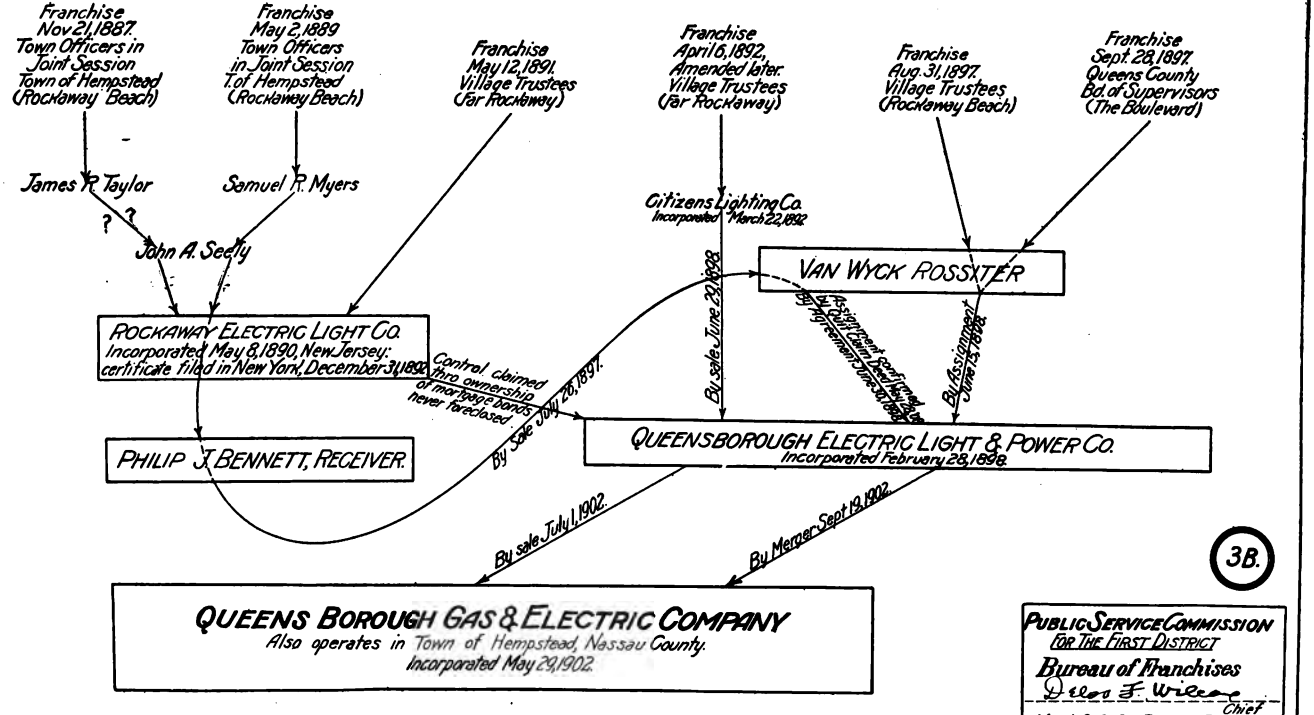
company to show that this franchise ever passed from the possession of the company to which it was granted originally. The present company claims, however, ownership of all or nearly all of the outstanding bonds of the Rockaway Electric Light Company, secured by a mortgage which has never been foreclosed. Relative to the status of this mortgage and the rights of the Queens Borough Gas and Electric Company resulting from its ownership of the Rockaway Electric Light Company bonds, Mr. Hawkins stated (pages 1673 and 1674):

"While the Rockaway Electric Light Company was a going concern and before these insolvency proceedings, instituted on behalf of creditors against the company, were begun, the Rockaway Electric Light Company executed a mortgage to the Central Trust Company, as trustee, to secure an issue of bonds, which mortgage is still outstanding. That mortgage was on the franchises and property of the company. So far as we know, all the bonds secured by that mortgage that were ever issued, we have; they having been delivered to us with other property, which came down to us from Rockaway Electric Light Company. The sale by Bennett, Receiver, of the pole line and Myers franchise, was of course subject to the lien of that mortgage. If there is any invalidity in that transfer from Bennett, Receiver, to Van Wyck Rossiter, it could easily be cured by a foreclosure of that mortgage, or by proceedings between the trustee under the mortgage, the Central Trust Company, and the holder of the bonds, to wit: Queens Borough Gas & Electric Company. We had deemed it unnecessary to go through that procedure, because we feel that the transfer through Philip Bennett, Receiver, vested us with title, subject to a lien, which lien we now possess."

As already stated in a preceding section, the company was unable to furnish any proof that this franchise had received the separate approval of the president of the village, as required by its terms, or that the grantee had filed the $5,000 bond subject to the approval of the president of the village before the franchise could become effective. In any case, however, whether this franchise was ever perfected or not, and whether or not it is now held by the Queens Borough Gas and Electric Company, either directly or indirectly, it applied to a district which is unquestionably covered by another franchise which is held by the present operating company.

Under the franchise of April 6, 1892, granted to the Citizens' Lighting Company, and afterwards transferred to the Queens

ELECTRIC LIGHT FRANCHISES CLAIMED BY THE QUEENS BOROUGH GAS & ELECTRIC CO.
WARD 5, BOROUGH OF QUEENS



3B.

PUBLIC SERVICE COMMISSION
FOR THE FIRST DISTRICT
Bureau of Franchises
Delos F. Wilcox Chief
March 3, 1909. Revised Jan 15, 1910.

AB.

Borough Electric Light and Power Company, and still later again transferred to the Queens Borough Gas and Electric Company, the company is required to furnish to the city free of charge the use of one cross arm on its poles for police and fire department wires. There is no provision for free lighting, but there are some elaborate provisions relative to poles, wires and excavations. The scope of this franchise was originally "electricity for lighting purposes only," but as already explained, the company claims that it was later amended so as to expressly authorize the sale of electricity for heat and power. According to the company's interpretation of its rights, however, it would be authorized to supply electricity for all purposes under the franchise as originally granted.

The franchises granted by the village of Rockaway Beach, August 31, 1897, and by the Board of Supervisors September 28, 1897, to Van Wyck Rossiter, were transferred by him by an instrument dated June 15, 1898, to the Queens Borough Electric Light and Power Company, and later transferred by that company to the present operating company. Both of these grants are unlimited as to time and neither of them contains any obligations for free lighting or free service of any kind.

It appears, therefore, that the present operating company unquestionably has a franchise for the Far Rockaway district authorizing it to supply electric light, and probably also heat and power. It also has a franchise for lighting the Boulevard, and a general franchise for the district formerly included in the village of Rockaway Beach. This much is clear. So far as Rockaway Park and Belle Harbor are concerned, it should be stated that in these sections the ownership of the streets is claimed by the private land companies, and the Queens Borough Gas and Electric Company appears to be supplying electricity through arrangements with them. The company has not furnished copies of any of these agreements.

The history of the transfers of this company's franchises is shown on the accompanying chart entitled "Electric Light Franchises claimed by the Queens Borough Gas and Electric Company," and an analysis of the provisions of these franchises is given in Table VIII.

TABLE VIII.—ANALYSIS OF ELECTRIC LIGHT FRANCHISES CLAIMED OR HELD BY QUEENS BOROUGH GAS AND ELECTRIC COMPANY.

Original grantee.....	James R. Taylor....	Samuel R. Myers....	Rockaway Electric Light Co.	Citizens' Lighting Co.	Van Wyck Rossiter..	Van Wyck Rossiter.
Local authority.....	Board of town auditors and highway commissioners, town of Hempstead.	Town authorities, including highway commissioners, town of Hempstead.	Village trustees subject to approval by president of village before going into effect.	Village trustees.....	Village trustees.....	Board of supervisors of Queens County.
Date of franchise.....	Nov. 21, 1887.....	May 2, 1889.....	May 12, 1891.....	April 6, 1892. Amended later.	Aug. 31, 1897.....	Sept. 28, 1897.
Territory covered by franchise.	Rockaway Beach from Norton's Bridge to western end.	Rockaway Beach from Norton's Bridge to western end.	Village of Far Rockaway.	Village of Far Rockaway.	Village of Rockaway Beach.	The Boulevard (in town of Hempstead, now in ward 5, Borough of Queens).
Area.....	5.4 square miles.....	5.4 square miles.....	2.3 square miles.....	2.3 square miles.....	1 square mile.....	.....
Population in 1910.....	7,589.....	7,589.....	.....	4,887.....	5,012.....	.....
Scope of franchise.....	Electricity for lighting	Electricity for lighting	Electric light (motive power on public streets excluded).	Electricity for lighting, not including motive power in any streets, (afterwards amended — date not given —so as to include light, heat and power, but not to authorize the "laying of street railroad tracks ").	Electric lights and power for stationary motors. "and for no other purpose."	Electric light and power.
When required to begin operations.	.....	Within eighteen months from date of grant.	.....	June 1, 1892.....	.....	.....
Free use of poles reserved.	.....	.....	.....	One cross-arm on poles reserved for use of police and fire departments.	.....	.....

Maximum rates for public lighting.	.....	"More liberal terms than are now charged."	.....	$110 per year for each 1,200-candle-power light (not less than thirty lights to be used); $30 per year for 50-candle-power incandescent lights; continuous service.	.....	.....
Maximum rates for private lighting.	.....	"More liberal terms than are now charged."	.....	16-candle-power incandescent lights for service the year round to eleven P. M., $1 per month; to one A. M., $1.25 per month; all night, $1.50 per month. Thirty per cent may be added to these rates for service less than a year.	.....	.....
Obligation to supply electricity.	.....	Must be ready to supply electricity in any part of territory.	"Must supply light to any person or corporation deserving the same." Must give "continuous service throughout the year" if contract is made for public lighting.	Must be prepared to supply electric light to any person or corporation.	.....	.....
Poles	.....	To be located subject to approval of highway commissioners.	To be set in all public places under direction of the trustees.	Not to interfere with travel; set five feet in ground, twenty-five feet above, and thirty feet above if lamps are hung across the street. Must be straight and dressed and painted according to ordinance. Not to be erected in front of private property except as provided by law and ordinance, nor without consent of owner.	.....	.....

TABLE VIII— ANALYSIS OF ELECTRIC LIGHT FRANCHISES CLAIMED OR HELD BY QUEENS BOROUGH GAS AND ELECTRIC COMPANY — (*Concluded*).

Wires	.....	Not to be placed over traveled portion of highways.	.....	To be insulated as approved by fire underwriters; to be laid with proper care, subject to law and ordinance, and as far as possible from water, gas and other pipes in the streets.	.....	.....
Underground construction required.	Not permitted under traveled portion of highways.	Not permitted under traveled portion of highways.	.....	Authorized; conduits to be at least twenty-four inches below surface; must not unnecessarily obstruct travel or damage property.	.....	.....
Excavations in streets	.....	.....	Streets to be left in good condition.	Streets to be left in as good condition as before disturbed. Not more than 200 feet of trench to be opened at one time and place. Travel not to be wholly prevented. Underground pipes not to be injured. Village trustees to be notified before work is begun.	.....	.....
Right to inspect street work.	.....	.....	Pole setting under direction of trustees.	Work subject to laws and ordinances.	Street work to be done under reasonable regulations prescribed from time to time by village trustees.	Construction work to be done under direction of county engineer according to reasonable regulations prescribed by supervisor.

Trimming of trees	.....	.....	.....	Shade trees not to be trimmed or in anywise injured.	.....	.....
Indemnity bond	.....	.....	Five thousand dollar bond to be furnished "as liquidated damages," to be approved by trustees or president before franchise is granted.	Bond for $5,000 as liquidated damages for failing to supply light by June 1, 1892. Grantee must also pay damages resulting from negligence and must protect village from suits for infringement of patents.	.....	.....
Acceptance of franchise required.	.....	.....	.....	Must accept "by writing under seal" before any work is done.	.....	.....
Date of filing acceptance of franchise.	.....	.....	.....	April 6, 1892	.....	.....
Grant exclusive	.....	.....	.....	.....	No	.....
Grantee's "successors or assigns" recognized in franchise.	Yes	Yes	No	No	Yes	Yes.
Number of times franchise has been transferred.	Four (?)	Four (?)	Three (?)	Two	Two	Two.

XXII. Electric Light Franchises in the Borough of Richmond.

The Borough of Richmond is being supplied with electric current by the Richmond Light and Railroad Company exclusively. Prior to the annexation of Richmond County to the City of New York, in effect January 1, 1898, there were in this territory four incorporated villages and four towns which had franchise-granting authority within their respective boundaries. These were the villages of New Brighton, Edgewater, Port Richmond and Tottenville, and the towns of Middletown, Northfield, Southfield and Westfield. There was also the town of Castleton, but prior to the date of the first electric light franchise, the boundaries of the village of New Brighton had been extended to cover the entire town and thus the village absorbed the franchise-granting authority of the town.

As already noted in this report, the county road system was adopted in the County of Queens and the Board of Supervisors of that county granted electric light franchises for the various county roads. Although the county road system was also adopted in Richmond, the Board of Supervisors seems never to have granted any electric light franchises in the streets adopted as county roads in that county. This is apparently accounted for by the fact that the county road system of Richmond was adopted under the terms of a special act, chapter 555 of the Laws of 1890, approved June 7, 1890, which applied only to counties not exceeding 200 square miles in area, while the county road system of Queens was adopted under a later act applying to all counties.

1. *Village of New Brighton Franchises.*— The village of New Brighton, which was co-extensive with the town of Castleton, occupied the territory that is now known as the First Ward of the Borough of Richmond.

A. Richmond Light, Heat and Power Company, Limited, contract and franchise, 1888.—As early as October 15, 1884, "George W. Beach and associates, 79 John Street, N. Y., 2d floor rear," petitioned the Board of Trustees of the village of New Brighton for permission to erect poles and run wires for electric lighting purposes. The records do not show that this application was granted. Another petition from the same parties was presented to the village board, dated October 7, 1889, with like result.

On May 17, 1887, Erastus Wiman petitioned the president of the village of New Brighton on behalf of the Staten Island Amusement Company for the privilege of erecting half a dozen poles to carry electric wires around the draw bridge at Bodine's Creek and convey light from St. George to Erastina. The records of the village do not show what, if any, action was taken upon this petition.

On October 27, 1887, the Board of Trustees of the village advertised for bids for electric lighting. Bids were received on November 10, 1887, and on January 5, 1888, the board adopted a resolution awarding a contract to the Richmond Light, Heat and Power Company Limited, "upon the execution of a written contract, terms of which shall be approved by the Board of Trustees, one provision of the contract being the offer of the company to light the village hall free." This contract was executed March 12, 1888, and recited that the village desired "to introduce the electric light system into the said village" and that the company was willing to construct an electrical plant subject to the conditions of the contract. Under this contract the company was to "have the right, privilege and authority to erect, maintain and operate upon the highways, roads, streets, avenues, terraces and lanes in the four separate lamp districts of the said village of New Brighton electric arc lamps of the Thomson-Houston system, and electric incandescent lamps of the Westinghouse system," and "the right to erect and maintain such poles and wires as are necessary to the carrying out of this contract, and for supplying electric lights to private consumers." Construction work was to be approved by the village engineer. The company agreed to furnish arc lamps of 1,200 candle power and incandescent lamps of 25 candle power on Central Avenue, Stuyvesant Place, Richmond Terrace, Bard Avenue, Castleton Avenue and Broadway, and all such streets connecting with Richmond Terrace in the four separate lamp districts of the village as should be designated by the village engineer. The apparatus was to be put into complete working operation on or before July 1, 1888. Lamps were to be lighted from sunset to sunrise every night, and the price was to be $80 per annum for each arc light and $15 per annum for each incandescent light, except that the company agreed to furnish free of

charge 26 incandescent lamps and three arc lamps in and near the village hall. The company agreed that its poles should be "pealed uniform in size and appearance" and were not to be less than 20 feet in height above the ground and not less than "six inches average diameter at the top." They were to be kept and maintained "of good sound and perfect timber," and were to be "kept properly and suitably painted with colors to be approved" by the village board. All of the company's lamps and poles were to be numbered. The company's wires were to be "completely and thoroughly insulated in every and all respects, similar to and as shall be approved and now in use in the cities of New York and Brooklyn for public lighting." The poles and wires were to be erected and maintained in such a way as not to interfere with or destroy shade trees, buildings, fences or other property. Excavations in the streets were to be properly guarded, the ground was to be restored to its original condition and all surplus earth and other materials were to be forthwith removed. The company agreed to indemnify the village against all loss and damage from accidents or other incidents arising from the company's operations. Provision was made for a penalty in case the company failed to put into operation the required number of lamps within thirty days after notification from the village engineer. It was further agreed that there should be deducted from the company's pay 25 cents for each arc lamp and eight cents for each incandescent lamp for each night that it was left unlighted through the company's fault. The village board on the other hand agreed that at all times while the company "can lawfully maintain its poles and wires under provisions of this agreement" it would give the company free access and entrance to the streets and public places for the purpose of erecting and maintaining its fixtures. The village board agreed that not less than 35 nor more than 125 arc lamps should be required for public lighting and not less than 400 incandescent lamps, and as many more as might be designated from time to time. It was agreed that the contract should be for one year and should terminate July 1, 1889, with the option, however, on the part of the village to a renewal of the contract on the same terms from year to year for four years longer. Moreover, it was expressly agreed that the village at its

option, or any other company or person who should be awarded the contract for lighting the streets after the termination of this contract or any of its renewals, should have the right to purchase for cash the company's poles and wires in the streets and highways, used for public lighting within 60 days after such termination. The price was to be $6 per pole, $400 per mile of single incandescent wire and $175 per mile of single arc wire if the property was purchased at the end of the first year. If purchased at the end of the second year a discount of 10 per cent was to be allowed, and for each year thereafter an additional discount until at the end of the fifth year there would be a discount of 40 per cent from the prices named. In default of such purchase the company was to have four years after the termination of the contract or any renewal of it before it could be lawfully required to remove its poles and wires. It was mutually agreed "that this contract or any provisions or benefits thereof or herein shall not be assigned or transferred." The company further agreed to execute a bond in the sum of $10,000 to guarantee its performance of the contract. The company also agreed to pay within 30 days the sum of $250 to the village counsel "on account of his services herein." The company agreed also to "carefully remove lamps now on the present lamp posts" and store them at its own expense for the village, subject to call. The village retained the right to forfeit the contract on 15 days' notice for failure on the part of the company to live up to its terms. It was provided, however, that "a failure to keep less than one-tenth part of the whole number of lamps in use lighted for less than ten consecutive days at any one time, or any damage occurring to the plant or any part thereof * * * caused by the elements, provided such damage shall be repaired within ten days after its occurrence, shall not be deemed or considered as coming under the provisions of this section."

Mr. Harry P. Nichols in an elaborate report to the Corporation Counsel, dated September 25, 1908, states that lighting was begun under this contract November 29, 1888, and that the contract was renewed May 20, 1889, June 2, 1890 (on condition that the company furnish free lighting to the fire-engine houses), and August 3, 1891. He also states that, on March 21, 1892, a further contract was authorized at a different rate.

The village minutes show that on September 23, 1890, W. D. Wiman appeared and asked permission for the company to erect poles outside of the lamp district on Post Avenue. This permission was granted; likewise two similar permissions on later dates. It appears that the company went bankrupt and that a portion of its property was sold May 31, 1892, to one Wiman, and by him transferred to the Electric Power Company November 15, 1892, and that the remainder of its property, except its franchise, which under a decision of Judge Gaynor it had no power to mortgage, was sold under foreclosure October 31, 1896, and transferred by deed to the Richmond Borough Electric Company January 5, 1897. Apparently the company's franchises perished with it and are not at the present time claimed by anybody.

B. The Electric Power Company contracts and franchise, 1893 to 1897.—After the disappearance of the Richmond Light, Heat and Power Company, Limited, from the minutes of the village of New Brighton, there appear references to the Electric Power Company of Staten Island, which seems to have succeeded the other company as an operating company in New Brighton. This company also went into bankruptcy, but on December 19, 1893, a public lighting contract was awarded to it for the period ending April 1, 1894. On August 7, 1894, Albert B. Boardman as receiver of the company entered into a lighting contract with the village, under which the receiver was authorized to erect and maintain electric arc and electric incandescent lamps in the streets of the village, and "to erect and maintain such poles and wires as are necessary to the carrying out of this contract and for supplying electric lights to private consumers." The terms of this contract were in most respects similar to the terms of the original contract with the Richmond Light, Heat and Power Company, Limited. The number of public lights to be furnished was fixed at 98 electrical arc lamps and 404 electrical incandescent lamps. The price for arc lamps was $87.50 each per annum, and for incandescent lamps $16.50 each. The contract was to take effect as of May 15, 1894, and was to terminate May 15, 1895. It was provided, however, that the receiver "shall have until the first day of July, 1897 (without prejudice to any other poles and wires being erected by or under the authority of

the party of the second part) before he can be lawfully required to remove his poles and wires, all of which the party of the first part (the receiver) hereby agrees to do in a good, proper, skillful and workmanlike manner * * *." It was agreed that this contract, like the one described in the preceding section, should neither be assigned nor transferred.

It appears from the report made by Mr. Nichols that a further contract with the Electric Power Company (or its receiver) was authorized by the village board May 22, 1895. It also appears that on February 14, 1896, Albert B. Boardman, receiver for the company, transferred to William R. McCormick all the company's property and franchises except certain land at Livingston, cash in bank, etc., and that William R. McCormick in turn transferred the property to one Austin B. Fletcher by deed recorded May 16, 1896. The property was transferred subject to a contract dated June 14, 1895, with the village of New Brighton, and at a later date, February 13, 1897, Mr. Boardman as receiver for the company sold at public auction to the New York and Staten Island Electric Company the "Livingston plant" of the Electric Power Company, and the formal transfer of this property was made by a deed February 27, 1897.

Apparently there was no franchise received by this company or its receiver from the village of New Brighton that could have been transferred. Indeed it would appear that the franchise contained in the contract of August 7, 1894, expired July 1, 1897, and if it did not actually expire at that time became revocable at the option of the village authorities.

It appears that the ownership of the electric fixtures in the streets of New Brighton has probably come down through (1) the Richmond Light, Heat and Power Company, Limited, (2) the Electric Power Company of Staten Island, (3) the Richmond Borough Electric Company, (4) the New York and Staten Island Electric Company, and (5) the Richmond Light Company (Richmond Light and Railroad Company). It does not seem probable, however, that any franchise rights described in this and the preceding section survive.

C. New York and Staten Island Electric Company franchise, 1897.— By resolution of the Board of Trustees of the

village of New Brighton, March 9, 1897, an electric lighting franchise was granted to the New York and Staten Island Electric Company. Under this franchise permission was granted to the company "to lay, erect and construct suitable wires or other conductors, with the necessary poles or other fixtures in, on and over the streets, avenues, public parks and places of the village of New Brighton, for the purpose of carrying on the business of lighting by electricity and using electricity for heat and power; and for the purpose of furnishing light, heat and power to public and private parties and the inhabitants of the village of New Brighton." The grant was made subject to the following conditions:

Wires crossing the streets were to be strung at least 15 feet above the crown of the roadbed. In case the company at any time desired to place its wires underground in the streets it was to do so at its own expense and under the supervision of the village engineer, and within a reasonable time restore the streets to as good condition as they were in before any excavations were made. In maintaining its wires and appliances overhead the company was not to injure or destroy any buildings, and not to trim or interfere with any trees without the consent of the property owners, or in the case of shade trees on the sidewalks without the trimming being done under the supervision of the village engineer at the company's expense.

During the work of construction the streets were to be obstructed as little as possible, and at no time left in a condition dangerous to the public. The company was to have "free access to and upon the streets, avenues and public places of the village for the purpose of erecting, placing, maintaining and operating the said poles, wires, lamps and appliances."

The company agreed that during any period when it was under contract with the village to furnish lights for the public streets, it would furnish, operate and maintain free of charge all necessary lights for the use of the village hall, the fire department houses (not exceeding 15 25-candle-power lights for each house), and the public schools and union free school houses. The number of lights to be furnished each school house was to be determined by the village trustees.

The company further agreed to pay into the village treasury on or before January 15th, each year, a sum equal to ½ of 1 per cent of its gross income earned during the preceding year from business done within the village of New Brighton. This percentage was to continue for ten years, and after that time the payment was to be increased to 1 per cent per annum.

The company was required "at all times whenever and wherever practicable in the employment of labor, skilled or otherwise," on work within the village, to "employ American citizens, residents of the County of Richmond, as laborers or otherwise, in and about the said works."

Other clauses related to poles, conductors, insulation and acceptance of franchise.

There is endorsed upon the document the following statement: "This franchise is hereby accepted and its qualifications, conditions and requirements hereby assumed. New York and Staten Island Electric Company, Edward P. Doyle, president, J. E. Comins, secretary."

2. *Village of Edgewater Franchises.*— The former village of Edgewater comprised portions of the old towns of Middletown and Southfield. These towns upon consolidation with the City of New York became Wards 2 and 4, respectively, of the Borough of Richmond.

In May, 1887, two companies made proposals to the village authorities to introduce electric lighting. One of them was the Edison Electric Illuminating Company of Staten Island, which stated that it had purchased Erastus Wiman's electric light plant at St. George. The other company was the Richmond Light, Heat and Power Company, Limited. The latter was given the contract for public lighting and commenced operation in the fall of 1887. This company was succeeded in 1893 by the Electric Power Company of Staten Island. In 1897 the Richmond Borough Electric Company took over the public lighting contract, but was very soon succeeded by the New York and Staten Island Electric Company. During 1896 and 1897 applications for electric lighting franchises had been received from the Richmond County Electric Light Company, the Port Richmond Electric Company and the Midland Electric Lighting Company. No fran-

chises were granted to these companies, however, and the former two were absorbed during 1897 by the New York and Staten Island Electric Company. Operation is now carried on in the district included in the former village of Edgewater by the Richmond Light and Railroad Company exclusively.

A. Richmond Light, Heat and Power Company, Limited, contracts, 1887 to 1893.— On the strength of a proposal made by the Richmond Light, Heat and Power Company, Limited, to the village trustees on May 23, 1887, a contract for public lighting was awarded to the company on July 11, 1887. The Franchise Bureau has been unable to get any trace of a copy of this contract, and consequently it is uncertain whether or not it included a franchise for commercial lighting. It appears from the minutes of the Board of Village Trustees that in its proposal the company offered to furnish electric street lamps of the Westinghouse system, each lamp to be of a capacity of 25 candle power actual measurement, and keep the lights going from sundown to sun-up every night in the year at the rate of $15 each per annum.

A new contract was awarded to the same company at the same rates on August 2, 1888, for the year ending May 31, 1889, and was renewed in 1889. On May 10, 1890, the company again offered to renew the contract. This offer was accepted; but the village board resolved that a committee of two be appointed with the counsel to the board to meet the company's representative and draw up a new contract; that they select two months of the year during which all new lights ordered should be erected, and that the village hall should be lighted free of charge. On May 18, 1891, the company's contract was again renewed on the same terms for the ensuing year, but in 1892 the Richmond Light, Heat and Power Company's bid was accepted for public lighting for one year from June 1, 1892, "at $15 for each lamp during such time as the power house is in working order to the satisfaction of the Board of Trustees, and $17.50 for each lamp from that time to the end of the fiscal year."

No references have been found in the village minutes during these years which indicate that the company was doing a commercial lighting business.

B. Electric Power Company's contracts, 1893 to 1896.— The Electric Power Company of Staten Island, which appears to have succeeded in November, 1892, to some of the property of the Richmond Light, Heat and Power Company, Limited, went into bankruptcy in May, 1893. Its receiver, Albert B. Boardman, was awarded a contract by the Board of Trustees of the village of Edgewater on July 11, 1893, and others in later years.

No copy of any of these contracts has been found.

C. The Richmond Borough Electric Company contract, 1897.— On November 17, 1896, the Richmond Borough Electric Company applied to the Board of Trustees of the village for an electric lighting franchise. Apparently this company became the successor of the Electric Power Company, for on January 21, 1897, the village entered into a contract with the Richmond Borough Electric Company for public lighting for the remainder of the fiscal year ending May 31, 1897, which had been covered by the contract conditionally awarded to the Electric Power Company in the preceding June. Under the terms of the Richmond Borough Electric Company's contract the company agreed to furnish 25-candle-power incandescent electrical lamps to be erected, operated and maintained at such points in the streets and parks of the village as the village authorities might determine, and to keep these lamps lighted from sunset to sunrise every night, at the rate of $17.50 per annum for each lamp, dating from January 5, 1897.

There is no reference in this contract to commercial lighting, and no authority was granted to the company by the terms of the contract to erect and maintain poles, wires and other fixtures for a general electric lighting business. An entry in the village minutes for February 16, 1897, refers to a notice that the Richmond Borough Electric Company had been succeeded by the New York and Staten Island Electric Company.

D. New York and Staten Island Electric Company franchise, 1897.— On February 16, 1897, the New York and Staten Island Electric Company, which had succeeded to the rights and property of the Richmond Borough Electric Company, applied to the Board of Village Trustees for an electric lighting franchise. This application was later amended, but the village minutes show that on March 5, 1897, the application was denied by a majority

vote. Shortly thereafter, however, the company renewed its application and on April 6, 1897, received a franchise from the village board.

Under this franchise the company was given permission "to lay, erect and construct suitable wires or other conductors with the necessary poles or other fixtures in, on, over and under the streets, avenues, public parks and places of the village of Edgewater for the purpose of carrying on the business of lighting by electricity and using electricity for heat and power and for the purpose of furnishing light, heat and power to public and private parties and the inhabitants of the village of Edgewater." The conditions of this grant are similar to those attached to the grant by the village of New Brighton, to the same company, already described.

The condition in regard to free lights provides that they shall be furnished for the use of the village hall "in all its parts," that "three five-light clusters" shall be furnished for the lighting of Washington Park, and also that the company shall furnish free "all necessary electric lights for all fire department houses" not exceeding fifteen 25-candle-power lights for each house, and "all necessary lights" for the public school and union free school houses, the number of such lights to be determined by the Board of Trustees.

The company agreed to pay to the village within 20 days after the granting of the franchise the sum of $3,000, and also ½ of 1 per cent of the gross income from the company's business within the village of Edgewater each year for the first 10 years, and 1 per cent of its gross income for each year thereafter. Payments were to be made semi-annually on the first day of June and the last day of December. The franchise was to run for a period of 20 years. The company further agreed that as long as the village continued to advertise for bids for street lighting as provided by the village charter the company would put in a bid at a price not in excess of the price for which it offered to furnish lights to other municipalities and not to exceed $17.50 per lamp per annum.

In response to the request for copies of missing franchise papers, Mr. Sims, representing the company, left with the Com-

mission a number of miscellaneous documents, among which were copies of two lighting contracts between the village of Edgewater and the New York and Staten Island Electric Company. One of these appears to have been executed May 25, 1897, and was for the year ending May 31, 1898. The other contract was executed December 31, 1897, the last day prior to the consolidation of the village with the City of New York, and was for the period of five years ending December 31, 1902. It is quite certain that this second contract was invalid, but even if both contracts were valid, they contain no provisions which would have any present effect upon the Richmond Light and Railroad Company's franchise rights in the territory included in the former village of Edgewater.

3. *Village of Port Richmond Franchises.*— The village of Port Richmond was a part of the old town of Northfield, which at the time of consolidation with New York City became Ward 5 of the Borough of Richmond. Electric light was first introduced into the village by the Richmond Light, Heat and Power Company, Limited, some time between 1887 and 1890. A proposal for public lighting by electricity made by the Montauk Construction Company was accepted by the village authorities in 1889 and thereafter the Staten Island Light, Heat and Power Company was organized to carry out the contract. This company continued public lighting in the village until 1894, when it was succeeded by the Port Richmond Electric Company, organized by Charles H. Ingalls. Finally, in 1896 an electric lighting franchise was granted to the Richmond County Electric Light Company and in 1897 the New York and Staten Island Electric Company received a public lighting contract. At present electric light operations are carried on within the limits of the former village exclusively by the Richmond Light and Railroad Company as successor of the New York and Staten Island Electric Company, which in turn succeeded to the rights and property of the Richmond County Electric Light Company and the Port Richmond Electric Company. The present company in filing its franchise papers with the Public Service Commission stated that it was unable to find among its documents any franchise from the village of Port Richmond. An examination of the official records shows,

however, that such a franchise was granted to the Richmond County Electric Light Company in 1896, and undoubtedly transferred by it with its other property to the New York and Staten Island Electric Company, so that the present company has as much claim to this franchise as to any of those filed by it outside of the village of New Brighton.

A. Richmond Light, Heat and Power Company franchise and permits, 1887 to 1892.— The minutes of the Board of Trustees of the village of Port Richmond show that on October 14, 1887, an application was received from the Richmond Light, Heat and Power Company, Limited, " for leave to set poles in the streets for the purpose of lighting the streets by electricity, and also furnishing electric lights for domestic purposes under such restrictions as the board may prescribe." The minutes recite that " on motion the petition was granted, the work to be done under the street commissioner's direction and poles to be set in sidewalks next the curbstone." It was expressly stipulated, among other things, that " this permit may be revoked by this board at any time."

The village minutes show that on January 8, 1889, Mr. F. S. Holmes, general manager of the company, appeared before the village board and asked permission to erect certain poles to straighten and improve the company's line through Heberton Avenue, and to arrange for lighting private dwellings. This request was granted on conditions, among them being one that the company was " to remove the poles at any time when so directed by resolution of this board." During the following year, that is to say, on July 18, 1890, a resolution was adopted by the village trustees reciting that the company had erected a line of poles under the permission granted the year before in certain streets. It was further recited that " the line so erected was not in accordance with the permission given by this Board and is an encumbrance to the public streets [as] it serves no public purpose whatever." It was accordingly resolved that the company be notified " to remove said poles from said street within two weeks from service of notice so to do." On September 5, 1890, a communication was received from the company by the village board stating that the line of poles complained of would be re-

moved and asking permission to erect other poles in Post Avenue to enable the company to light a certain individual's place from the company's lines in West Brighton. This petition was granted, " the poles to be promptly removed whenever directed by this board."

On July 19, 1889, the company had asked leave to erect poles in the Shore Road and Sharp Avenue between the railroad stations in order that it might " arrange for lighting buildings." This request was granted, the company agreeing " to remove the poles at any time when so directed by resolution of this Board." In November of the same year the company made a proposal for public lighting, but it was under-bid by the Montauk Construction Company, to which the contract was awarded. On May 4, 1891, a representative of the Staten Island Light, Heat and and Power Company, to which this contract had been assigned, appeared before the village board " and stated it to be the understanding that when his company made its contract with this village to furnish lights, etc., the Richmond Light, Heat and Power Company would not be allowed to erect their poles for the purpose of lighting private houses or stores in the village, and that said company had erected poles for such purposes, damaging the Staten Island Light, Heat and Power Company about $400." Apparently no action was taken, however, upon this complaint, and six months later, November 2, 1891, on petition of the Richmond Light, Heat and Power Company, permission was granted to it to erect additional poles on certain streets. This permission was granted after the company's petition had been referred to lawyers and a written opinion rendered, and after the hearing of parties on both sides. The company was subsequently authorized to erect and maintain additional poles, but the later grants for specific locations did not contain an express reservation of authority on the part of the village board to order the poles removed. The village minutes for January 7, 1896, show, however, a committee report to the board of trustees to the effect that there were 48 poles which were not in use. As it appeared that these poles were the property of the Richmond Light, Heat and Power Company, it was ordered that the company " immediately remove all poles now standing in the several streets of the village owned by them and not in actual use."

The franchises of the Richmond Light, Heat and Power Company, Limited, do not seem to be claimed by the present operating company as none of these papers were filed with the Public Service Commission with the company's franchise documents, and no reference was made to the Richmond Light, Heat and Power Company either in the present company's correspondence in regard to documents or at the hearings.

B. Staten Island Light, Heat and Power Company contract, 1889 to 1893.— On November 8, 1889, the Board of Village Trustees awarded a contract for street lighting to the Montauk Construction Company, whose bid was the lowest. On November 29, 1889, the village clerk reported that according to notice received by him a corporation named the Staten Island Light, Heat and Power Company had been organized to execute a contract with the village under the Montauk Construction Company's proposal. A week later, on December 6, 1889, the village counsel, Mr. DeGroot, reported that he had caused an examination to be made of the organization of the Staten Island Light, Heat and Power Company and that the company appeared to be regularly organized under the laws of New Jersey, with an office in New York City. Thereupon a resolution was adopted by the village board requiring the Montauk Construction Company to cause the contract for public lighting to be executed within one week in accordance with the company's proposal. It appears that this contract was executed and that the Staten Island Light, Heat and Power Company continued to furnish public lighting in the village, probably until 1894, when it was succeeded by Charles H. Ingalls and the Port Richmond Electric Company. No copy, however, of the original contract between this company and the village or of any renewal contracts can now be found, either among public records or among the documents of the Richmond Light and Railroad Company. It cannot be determined, therefore, whether or not the company enjoyed a franchise for private lighting. That the company claimed such a franchise would appear, however, from the incident described in the minutes of May 4, 1891, to which I have already referred, where the company protested against permission being granted to the Richmond Light, Heat and Power Company to do a commercial lighting business in the village.

The present operating company did not file with the Public Service Commission with its franchise papers any of the documents of the Staten Island Light, Heat and Power Company, and does not appear to claim any franchise rights originally acquired by the latter company.

C. The Charles H. Ingalls and Port Richmond Electric Company franchise and contract, 1894.— On March 13, 1894, a bid of Charles H. Ingalls for lighting the streets of the village of Port Richmond was accepted by the village board and Mr. Ingalls was notified to appear before the board at its next regular meeting. A contract in pursuance of this award was entered into on April 26, 1894. It is recited in this contract that the village "desires to have all its streets, avenues, roads and highways and parks lighted by the electrical light system" and accordingly it was agreed that Ingalls "shall have the right, privilege and authority and hereby covenants and agrees to erect, maintain and operate upon all the highways, roads, streets and avenues and in the public park in the said village such poles and wires with electric lamps thereon as are or shall be necessary to the carrying out of this contract with said village, and for the lighting of all the streets, highways, roads, avenues and park aforesaid."

The grantee was to furnish "not less than 301 electrical incandescent lamps of the Heisler system or such other system as may be agreed upon by and between the parties of this contract," of not less than 32 candle power each. The grantee also agreed to put arc lights at points to be designated by the street committee. Lamps were to be kept lighted from sunset to sunrise every night of the year. The village agreed to pay at the rate of $17.50 per annum for incandescent lamps and $100 per annum for arc lamps. Other provisions related to location and maintenance of poles, insulation of wires, injury to private property, street excavations, locations of lamps, outages, etc.

It was stipulated that the contract should "end and terminate" at the end of five years from its date, but the village reserved the right or option of purchasing the electrical plant at any time during the continuance of the contract upon the payment of an undetermined amount. The space in the document left for the purchase price was left blank. The contractor agreed to furnish

electric lights free of charge for the several fire department companies located in the village for the purpose of lighting the rooms where the different apparatus of the companies was located, upon condition that the fire companies "pay for the fixtures and the expenses necessary to place said lights in position." It was agreed that upon the termination of the contract the grantee, unless he had received a further contract for street lighting in the village, should at once remove all poles, wires and lamps from the streets, and in case he failed to do so within thirty days after the termination of the contract the village reserved the right to "make such removal" at his expense.

On June 13, 1894, Ingalls and the Port Richmond Electric Company, of which he was president, asked the village board to authorize the assignment of the contract to the company. It appears from the minutes of the board of village trustees that this request was granted July 6, 1894, and that on July 20, 1894, the company's sureties were approved.

Any transferable rights of the Port Richmond Electric Company were acquired in 1897 by the New York and Staten Island Electric Company, but the present operating company has not filed with the Public Service Commission among its franchise documents a copy of the Ingalls contract, and does not appear to claim franchise rights under it.

D. Richmond County Electric Light Company franchise, 1896.— On September 10, 1896, Edward P. Doyle appeared before the Board of Trustees of the village of Port Richmond, as president of the Richmond County Electric Light Company, and applied for a franchise to furnish light, heat and power for public and private use, with the right to erect poles, set wires and lay conduits or other necessary things to "carry out its object." The company offered to pay to the village 1½ per cent of its gross receipts during the first five years, 3 per cent during the second five years and 5 per cent thereafter. Upon the receipt of this application a resolution was unanimously adopted authorizing the company "to lay, erect and construct suitable wires or other conductors with the necessary poles, pipes or other fixtures in, on, over and under the streets, avenues and public parks and places of the village of Port Richmond for conducting and dis-

tributing electricity in the furnishing of light, heat and power, provided that this consent given by this board as the municipal authorities of the village of Port Richmond shall not be construed to be an exclusive consent, and that the said consent shall at all times be subject to such necessary and reasonable regulations as this Board of Trustees may from time to time prescribe." It was further stipulated that "no work shall be done on the streets, sidewalks or public places except according to plans filed from time to time and approved by the Board of Trustees of the village." This grant was made upon the express condition that the company would pay the percentages of gross receipts offered in its application.

On September 20, 1896, the village board ordered the company to discontinue the erection of any poles and wires in the village until further notice from the board granting the company the privilege to proceed with the work. The village minutes show that on September 28, 1896, the Board of Trustees was called together for the purpose of taking action relative to an order of the Supreme Court of Richmond County requiring the trustees to appear on November 5, 1896, and show cause why an injunction should not be issued restraining them from rescinding or revoking the franchise granted to the Richmond County Electric Light Company. In the minutes for March 17, 1897, there is an entry which shows that the counsel reported to the Board of Trustees that a permanent injunction had been secured by the company. In the meantime, on February 13, 1897, Mr. Edward P. Doyle, president of the company, had appeared before the village board and asked that the petition and plans of the company for the erection of poles, etc., presented at a meeting of the board held November 10, 1896, "be granted and approved." Thereupon it was ordered "that a committee of three be appointed relative to electric light matters and that the above mentioned petition be granted and the plans approved, *provided* the company immediately removes from the street all damaged and dangerous poles and all poles not in use, and that all work in connection therewith be done subject to the approval of the said Committee."

On May 19, 1897, the company was required to place some 98 additional incandescent lights on various streets in the village

It would appear from this and from later proceedings that pending the determination of its injunction proceedings the company had probably acquired the rights of the Port Richmond Electric Company under its contract for street lighting, and that the property, rights and franchises of both these companies had been acquired by the New York and Staten Island Electric Company on February 10, 1897.

Among the franchise documents originally filed with the Public Service Commission by the Richmond Light and Railroad Company no franchise for electric lighting in Port Richmond was included. It was not until after the company's attention had been called at one of the hearings to the franchise granted to the Richmond County Electric Light Company September 10, 1896, that the representatives of the present operating company looked the matter up and claimed the franchise.

It was the practice of the old local authorities of Richmond County to hand out franchises from time to time as signed documents without always taking the trouble to make a note of them on the minutes, while on the other hand entries in the minutes appearing to grant franchises upon certain conditions to be later determined were sometimes not followed up by the execution of the proper documents fixing the terms and conditions.

E. New York and Staten Island Electric Company contract, 1897.— The original Ingalls contract for public lighting executed April 26, 1894, was to run for a period of five years and was non-transferable. Its transfer, however, with the approval of the village authorities to the Port Richmond Electric Company has already been noted. After the Port Richmond Electric Company and the Richmond County Electric Light Company had sold their property and franchises to the New York and Staten Island Electric Company, the latter applied to the Board of Village Trustees for a new lighting contract to take the place of the Ingalls contract. This application was made August 31, 1897, nearly two years before the expiration of the term of the Ingalls contract. In making this application Mr. Doyle as president of the new company stated that the Ingalls contract had been transferred to the Richmond County Electric Light Company and by it transferred to the New York and Staten Island Electric Company.

On September 3, 1897, a contract was awarded by the Board of Trustees to the New York and Staten Island Electric Company and was executed September 7, 1897. This contract recites that Ingalls had operated a plant for electrical lighting and had equipped it with a system of incandescent lights; that a charter for the establishment and maintenance of a complete plant for electrical lighting had been granted by the village to the Richmond County Electric Company and by it transferred to the New York and Staten Island Electric Company, and that the latter company had succeeded to all of the rights and interests of Mr. Ingalls under the said contract, "to which said village has consented." This document further recited that the company would light the streets, public grounds and public buildings of the village with electricity for a period of five years from September 1, 1897. Arc lamps were to be of 1,200 candle power each and incandescent lamps of 32-candle power. The village agreed to pay the company $100 a year for each arc lamp and $17.25 a year for each incandescent lamp, except that light was to be furnished to all fire company houses and public schools free of charge.

This contract did not of itself grant any continuing franchise rights. It recognized, however, the validity of the general franchise granted to the Richmond County Electric Light Company and of its transfer to the New York and Staten Island Electric Company.

F. Electrical Subway franchise, 1897.— On February 16, 1897, a resolution was unanimously adopted by the Board of Trustees of the village of Port Richmond authorizing Joseph P. Pearce, Jr., Horace E. Bull and five others, their executors, administrators and assigns collectively "to construct subways; to lay, construct, operate, maintain and use (and collect toll, rent and compensation therefor) under all the streets, villages, sidewalks and public places in the village of Port Richmond, wires, pipes, conductors, conduits, fixtures, appliances and appurtenances for conducting and distributing electricity, gas, water, oil, fluids, wires and steam." The grantees were also authorized "to erect, string and maintain in the said streets, sidewalks and public places poles, wires, appliances, fixtures and appurtenances

for use in the operation of the said subways, pipes, conduits and conductors." The grantees were expressly authorized to open the streets and public places of the village at all times for the purpose of constructing and maintaining their fixtures. It was stipulated, however, that immediately after any street work was done the streets should be restored to their previous condition. The grantees were required to meet and organize and take steps to induce all corporations having wires and poles in the streets to put them under ground. As compensation for this franchise the grantees were to pay the village $100 in cash and ½ of 1 per cent of their net receipts during the first year, 1 per cent of their net receipts during the second year and 2½ per cent of their net receipts thereafter. Before opening any streets they were required to file a bond in the sum of $5,000 to secure the restoration of the streets and to indemnify the village against accidents. All work was to be finished to the satisfaction of the Board of Trustees.

On December 24, 1897, just one week before consolidation, Mr. Pearce appeared before the village board, and said that he was ready to pay the sum of $100 under the provisions of the resolution of February 16, 1897. He was informed that the board had no authority to receive money, and was directed to pay it to the treasurer of the village. On the same date Mr. Frederick C. Marsh appeared before the board as counsel for the grantees of the subway franchise and stated that the grantees had organized and had incorporated as the Richmond Borough Subway Company under the laws of the state of New Jersey. He asked that the franchise be amended by substituting the name of the company for the names of the original grantees. This request was granted and the franchise resolution amended accordingly. The company's bond was then fixed in the sum of $10,000.

No record has been found of any activity under this franchise or a similar one granted by the local authorities of the town of Northfield, to which reference will be made later in this report. The present status of the Richmond Borough Subway Company and of the rights obtained under this franchise has not been ascertained.

4. *Town of Northfield Franchises.*—The old town of Northfield became Ward 3 of the Borough of Richmond at the time of

consolidation with New York. That portion of the town of Northfield outside of the village of Port Richmond was erected into a separate road district by act of the legislature, chapter 618 of the Laws of 1881, and the control of the streets in the road district was given to a single highway commissioner, instead of the usual board of three commissioners.

A. The Lisk franchise — Richmond County Electric Light Company, 1897.— On January 14, 1897, John W. Lisk, commissioner of highways for the separate road district of the town of Northfield, granted the Richmond County Electric Light Company a franchise "to erect poles, string wires and all other appurtenances and appliances for the carrying on of electric lighting and power in said town of Northfield, and to enter upon the highways, streets and public places of said separate road district for that purpose at all reasonable times." The commissioner added "and this franchise and grant shall not be revocable except by due process of law." This franchise was granted absolutely without conditions unless the use of the words, "upon application in writing of the Richmond County Electric Light Company duly made," made the application itself part of the franchise. No copy of this application has been filed with the Public Service Commission or has been discovered among the official documents of the city. Mr. Nichols notes in his report that there is on file in his office a copy of an application by this company to the town board of Northfield dated January 6, 1897, but there is no record that the company ever secured the consent of the town board.

B. Town Board franchise — New York and Staten Island Electric Company, 1897.— On April 12, 1897, the town board adopted a resolution to the effect that a contract be entered into with the New York and Staten Island Electric Company for lighting the streets and public buildings in the town of Northfield outside of the limits of the village of Port Richmond, subject to terms and conditions among which were the following:

The company was to light all the fire houses and school houses with a sufficient number of lights free of charge; to pay the town one-half of one per cent of its gross receipts in the territory covered by the contract; and to furnish as many 25-candle-power street lights, to be kept burning every night in the year from sunset to sunrise, as the town board might require.

The town board was to pay $17.25 a year for each street light furnished, or a proportionate amount in the case of lights not furnished for the entire year, payments to be made semi-annually. The contract was to be in force for the period of ten years from the date of the resolution.

There is an acceptance of this resolution on file with the City Bureau of Franchises, dated April 20, 1897, addressed to the Town Board of the town of Northfield, in which the company, by J. E. Comins, secretary and treasurer, apparently attempts to enlarge the scope of the resolution accepted by the use of the words:

"The New York and Staten Island Electric Company hereby accepts the grants, privileges and concessions for the laying, erecting and constructing of wires or other conductors, with the necessary poles or other fixtures in, on and over the streets, avenues, public parks and places of the town of Northfield for the purpose of carrying on the business of lighting by electricity and using electricity for heat and power and for the purpose of furnishing light, heat and power to public and private parties and the inhabitants of the town of Northfield, as granted and secured to it by the certain Resolutions adopted by your Honorable Board on April 12, 1897. * * * This formal acceptance is executed and delivered by the said New York and Staten Island Electric Company in accordance with the provisions of the said Resolutions and for the purpose of vesting in it and making operative the grant in said Resolutions set forth; and as and for the purpose of, and to express, the contract by and between the Town of Northfield and the said New York and Staten Island Electric Company in the premises, and the considerations and conditions of such contract. And said New York and Staten Island Electric Company hereby accepts and agrees to all and singular the conditions, regulations and requirements in the said Resolutions set forth and contained, and hereby promises, agrees and assumes to perform the same; and expressly promises and agrees in consideration of the grants, privileges and concessions secured to and vested in it, to make the specified annual payments of percentages upon its annual gross earnings required by said Resolutions to be paid into the treasury of the said town as a consideration for the aforesaid grant."

It is to be noted that, while the resolutions themselves contained no reference to private lighting, the company's acceptance specifically reads into the resolutions a general franchise grant.

There is also on file with the City Bureau of Franchises an uncertified copy of another contract between the New York and Staten Island Electric Company and the town of Northfield, which appears to have been executed April 20, 1897, the same day on which the company filed its acceptance of the resolutions of April

12, 1897. This second contract is signed by J. E. Comins as secretary and treasurer of the company and by Edward P. Doyle as supervisor, and Andrew J. Hinton as clerk of the town. It should be noted that Doyle was at the same time president of the company as appears from his applications for franchises and contracts in other towns and villages of Richmond County. The first section of this contract provides specifically that the company "shall have the right, privilege and authority to erect, maintain and operate upon the highways, roads, streets, avenues, terraces and lanes in the lamp district in the town of Northfield, electric lamps, and shall have the right to erect and maintain such poles and wires as are necessary for the carrying out of this contract and for supplying electric lights to private consumers; the erection and construction of said wires and poles to be approved by the said town board of said town, or some person by them selected." This contract then sets forth in elaborate form the terms and conditions of the agreement, including those enumerated in the resolutions of April 12. The free lights for fire department houses are limited to fifteen lamps of 25 candle power each for each house. Other clauses regulate the kind of poles to be used, insulation of wires, injury to property, street work, etc.

The contract was to continue until April 1, 1907, and the company promised that "at all times, whenever and wherever practicable in the employment of labor, skilled or otherwise, in the erection, construction and maintenance" of its plant, it would "employ residents of said town as laborers or otherwise in and about said work."

There appears in the minutes of the town board of April 23, 1897, three days after the date of this contract, but the same date on which the contract was executed by Doyle and Hinton on behalf of the town, a resolution to the effect that if the contract between the company and the board for the lighting of the town outside of the limits of Port Richmond be entered into the company before proceeding with any work under the contract, must give bond in the sum of $10,000, with two sureties to be approved by the Board. No record has been found of the filing of the bond required, and no record has been found to indicate that the highway commissioner gave his consent to the operations of this com-

pany, although the obtaining of this consent was one of the conditions of the contract with the town board dated April 20, 1897, and executed three days later. It is to be noted, however, that on February 10, 1897, more than two months prior to the date of this contract, the company had acquired by purchase the property and rights of the Richmond County Electric Light Company, which in turn had obtained from the Commissioner of Highways of the separate road district of the town of Northfield the franchise described in the preceding section of this report.

The present operating company does not, however, appear to make any claims of any franchise or contract derived from the action of the town board on April 12, April 20 or April 23, 1897. At least no documents referring to such action or claiming franchise rights thereunder have been filed with the Public Service Commission among the documents by the Richmond Light and Railroad Company.

C. The Melvin Subway franchise, 1897.— There appears on the minutes of the town board of the town of Northfield for March 15, 1897, a resolution unanimously adopted, granting an electrical subway franchise, similar in character to the one above referred to granted by the village of Port Richmond.

We have found no record to show that a corporation was ever formed to exercise this franchise, that the franchise was, as a matter of fact, exercised, or that it is now claimed by any one as a valid franchise.

5. *Town of Middletown Lighting Contract,* 1897.— The former town of Middletown became Ward 2 of the Borough of Richmond at the time of consolidation with New York. That portion of the town not included in the village of Edgewater constituted a separate road district. The Richmond Light and Railroad Company is operating there, but was unable to furnish to the Commission any conclusive evidence that it, or any of its predecessors, ever received a franchise from the town authorities. In the absence of a franchise the company filed certain extracts from the minutes of the town board. From these extracts it appears that on December 17, 1897, a resolution was adopted by the town board providing for the publication of a notice of petition for the establishment of a lamp district and for the making

of a contract for electric lighting. It also appears that on December 31, 1897, the town board adopted a resolution accepting the proposition of the New York and Staten Island Electric Company " to light with electricity the lamp district heretofore created in the town of Middletown outside of the village of Edgewater and the streets, avenues and highways of said lamp district for the period of ten years from this date, with two hundred and fifty-two (252) incandescent lamps at the rate of seventeen and twenty-five one hundredth dollars ($17.25) per lamp per year, to be paid annually on the 31st day of December in each year." By this resolution also it was set forth that " the Supervisor and Town Clerk are hereby authorized and empowered to execute a contract with said Company with appropriate covenants and a bond in the sum of Five thousand ($5,000) dollars by said Company that it will keep and perform all its covenants and which bond shall be subject to the approval of the Supervisor of the said Town." It appears from Mr. Nichols' report that Edward P. Doyle, president of the New York and Staten Island Electric Company, appeared before the town board on May 19, 1897, with an application for permission to erect poles and wires, to furnish light to that portion of the town outside of the village limits. This application was referred to a committee which reported progress at two subsequent meetings. On October 19, 1897, Doyle again appeared before the board and presented a petition asking for the establishment of a lamp district outside of the village limits. On December 29, 1897, two days prior to the acceptance of the proposition mentioned above, the board adopted a resolution making the separate road district of the town a lamp district. On the following day the company submitted its bid, which, as already stated, was accepted December 31, 1897, the last day prior to consolidation. No record has been found of any electric lighting franchise granted by the town of Middletown, and no copy of the contract authorized December 31, 1897, with the New York and Staten Island Electric Company, if such a contract was in fact executed, has as yet been discovered.

6. *Town of Southfield Franchises.*— The former town of Southfield became Ward 4 of the Borough of Richmond at the time of consolidation. No record has been found of any fran-

chises granted by the local authorities of this town for electric lighting purposes prior to 1897. In that year, however, grants were made to the New York and Staten Island Electric Company both by the town board and by the highway commissioners. Applications for franchises were also made in that year by the Richmond County Electric Light Company and the Midland Electric Lighting Company, but, so far as the records show, no franchises were granted to these companies.

A. Highway Commissioners franchises, 1897.—It appears from Mr. Nichols' report that on March 10, 1897, E. P. Doyle, president of the New York and Staten Island Electric Company, applied to the Highway Commissioners of the town of Southfield for a franchise covering that portion of the town lying outside of the village of Edgewater. The application was renewed April 13, 1897. At the same time Mr. Doyle filed with the commissioners a certified copy of certain proceedings of the town board purporting to have granted the company a franchise. Both the application and the proceedings were returned by vote of the Highway Commissioners to the applicant. It seems that depending on the alleged grant from the Town Board the company had commenced to erect poles in the streets. Accordingly, on May 13, 1897, the Highway Commissioners passed a resolution authorizing their counsel to abate the nuisance. This resolution was readopted the next day, but was rescinded on May 18, 1897, and the company was notified to appear before the commissioners. On May 25th Mr. Frank W. Pfaff appeared on behalf of the company and applied for consent to the erection of poles and other fixtures for the distribution of electricity. Thereupon the commissioners adopted a resolution granting the application upon condition: First, that all suits pending against the Commissioners, their employees and agents be discontinued; second, that the consent be granted as far as the powers of the Highway Commissioners extended for streets, avenues and parkways outside of the village of Edgewater; third, that the grant be "subject to such conditions and requirements as the board may see fit to impose."

On May 26, 1897, Mr. Doyle appeared before the Board with an agreement which was accepted and signed. A copy of this agreement was furnished to the Public Service Commission

among certain supplementary papers discovered in connection with the hearings on franchises by the Richmond Light and Railroad Company. Under this agreement the Commissioners gave permission to the company "to lay, erect and construct suitable wires or other conductors with the necessary poles or other fixtures in, on, over and under streets, avenues, public parks and places in the town of Southfield, outside of the village of Edgewater, for the purpose of carrying on the business of lighting by electricity and using electricity for heat and power and for the purpose of furnishing light, heat and power to public and private parties and inhabitants of the town of Southfield" upon certain conditions. It was stipulated that whenever the company should put its wires under the streets the work should be done at its own expense, but in accordance with the directions and under the supervision of the Commissioners.

The company agreed to furnish, maintain and operate free of cost all necessary lights in and for the use of the public schools, fire department houses and churches outside of the village of Edgewater, the number of lights in each case to be determined by the Highway Commissioners. It was stipulated that the agreement relative to free lighting should last during the continuance of the franchise granted the company by the Town Board.

On December 29, 1897, the Highway Commissioners adopted a resolution to the effect that the electric lighting franchise previously granted to the New York and Staten Island Electric Company to erect poles and fixtures for the purpose of carrying on the business of lighting by electricity "shall be in perpetuity unless the courts shall finally decree that under the provisions of the charter of Greater New York, or otherwise, this board had not the power at the time of granting said consent and permission to grant the same to the said company in perpetuity, in which event the consent and permission given by this board shall exist, obtain and be vested in the said company for the period of 25 years or for the maximum period for which this board had or now has the power to grant the same in case the said maximum period is other than 25 years." It was further resolved that "nothing in these resolutions shall be construed to prejudice the said consent and permission, but that the same are hereby ratified and confirmed in all respects."

B. Town Board grants, 1897.— There are some very interesting entries in the minutes of the town board relative to franchise grants of the New York and Staten Island Electric Company. On March 11, 1897, a resolution granting the company an electric lighting franchise was declared carried by the chairman, although the vote was three to three. At the next meeting of the board on March 16, 1897, the question of approving the minutes of the preceding meeting came up and the vote was again three to three, after which the chairman declared the minutes approved. Thereupon one of the opposition moved to rescind the resolution of the preceding meeting granting a franchise to the New York and Staten Island Electric Company, and on this motion also the vote was three to three. In this case, however, the chairman declared the motion lost. Apparently the chairman went on the theory that he had a vote as presiding officer of the town board in case of tie, although he had already voted once as supervisor.

There is on file with the city Division of Franchises a paper purporting to be a copy of a letter from Edward P. Doyle, president of the company, dated April 26, 1897, and addressed to the Town Board, which contains the following declaration:

"The New York and Staten Island Electric Company received from your Board on Tuesday, March 16, 1897, a Franchise subject to certain conditions to be approved by your Board.

"This franchise covered all streets, highways and public places in the Town of Southfield, outside of the Village of Edgewater, and gave my Company the right to erect poles, stretch wires, and do business in your Town, subject to certain conditions to be drawn by Counsel and approved by your Board. These conditions have been prepared by your Counsel and meet our approval.

"Since the 16th day of March, however, your Board has held a number of meetings without being able to secure a quorum for the transaction of business. I have been present at each meeting on behalf of my Company, and would gladly have accepted the conditions drawn by your Counsel, had your Board approved them.

"The people of your Town are anxious for Electric Lights, and one of the expressed conditions in our Franchise was, that the work should begin at once in your Town.

"I desire, therefore, to notify you that I will commence work under my Franchise, and that I am prepared at any time to sign such reasonable contract or agreement as your Board may make."

Among the copies of electric lighting franchises filed with the Public Service Commission by the Richmond Light and Railroad

Company, there is a copy of a certified copy of a resolution said to have been adopted by the Town Board of the town of Southfield on August 30, 1897. The original certification was by Joseph A. Cody, town clerk, who states that the resolution was passed by the Town Board on the date mentioned and filed with him on the same date. Mr. Nichols states in his report, however, that there are 14 blank pages in the minute book of the Town Board of the town of Southfield, so that there are no recorded minutes of any meeting between July 30, 1897, and November 22, 1897. It appears, therefore, that this franchise cannot be verified from the official records.

Under this grant the company was authorized "to lay, erect and construct suitable wires or other conductors with the necessary poles and other fixtures in, on and over the streets, avenues, public parks and places in that part of the town of Southfield lying outside of the village of Edgewater, for the purpose of carrying on the business of lighting by electricity and conducting and distributing electricity in the furnishing of light, heat and power for commercial purposes only, to public and private parties." This franchise was granted subject to several conditions affecting location of wires, damages to property, insulation of wires, street work, employment of American citizens and residents, etc.

The company agreed to furnish and maintain free of charge "all necessary or proper electric lights for all fire department houses," not exceeding 15 25-candle-power lights for each house, and "all necessary electric lights in the public schools and Union Free School houses," the number of lights to be furnished for each school to be determined by the school commissioner of the County of Richmond or her successors. The company also agreed to pay ½ of 1 per cent of its gross income for business done within that part of the town lying outside of the village of Edgewater, into the town treasury, each year for the first ten years, and thereafter to increase this payment to 1 per cent per annum.

The company was to file its acceptance of the franchise with the town clerk of the town of Southfield by the 1st of October, 1897, and its acceptance was to be "an assumption by it of all the conditions, requirements and regulations" contained in it, and

the grant was to be deemed a contract between the town and the company. The company's acceptance is not attached to this document and was not originally filed with the Public Service Commission among the franchise papers of the present operating company. However, among the papers left by the representatives of the company with the Commission at one of the hearings is a copy of this acceptance certified to by Joseph A. Cody, town clerk of the town of Southfield, in which Mr. Cody states that the acceptance was filed in his office September 18, 1897. The document is signed by Edward P. Doyle, president, and J. E. Comins, secretary, and was acknowledged by the latter on September 3, 1897.

7. *Village of Tottenville Franchise,* 1897.— The village of Tottenville was located in the old town of Westfield, which is now Ward 5 of the Borough of Richmond. The village was first incorporated by a special act of the legislature in 1869. It was reincorporated, however, under the General Village Law in 1894, and its area somewhat diminished. No record has been found of any electric lighting franchises granted prior to the reorganization of the village.

The only electric lighting franchise granted by the village of Tottenville seems to have been granted by the village board of trustees on November 17, 1897. It appears from a document filed with the City Division of Franchises that the original application of the New York and Staten Island Electric Company was dated April 20, 1897, and that in this application the company agreed to be subject to such reasonable regulations as might be prescribed by the village authorities. The company also promised, in case its application was granted, to light all public buildings in the village free of charge, to pay into the village treasury ½ of 1 per cent of its gross receipts and to purchase the existing lighting plant of the village for the sum of $250. Mr. Nichols states in his report that the company's application was received by the village board October 5, 1897, and was then placed on file to be taken up at the next regular or special meeting. He also states that the matter was taken up at two meetings in October, 1897, but final action was postponed until the counsel could advise the board as to whether or not the franchise could be granted for

fifty years. The counsel's advice seems to have been to the effect that this could not be done. The franchise was finally granted at a special meeting held November 17, 1897. Under this franchise permission was granted to the company for 25 years "to lay, erect and construct suitable wires or other conductors with necessary poles or other fixtures in, on, over and under the streets, avenues, highways, parks and public places of the village of Tottenville, for the purpose of carrying on the business of lighting by electricity and furnishing electricity for heat and power to the public and private parties in the said village of Tottenville."

This franchise was in the form of a contract, signed by the president of the village and the village clerk and by the president of the company. The company accepted the franchise subject to conditions rather more stringent and specific than usual. For example, the quality of the light, power and heat was to be approved by the village trustees and their engineer or their successors and legal representatives. Lamps, both arc and incandescent, were to be "operated constantly and without interruption during the continuance of said franchise when required for use, with the full strength of not less than 25 candle power for each incandescent lamp."

The company agreed to furnish, operate and maintain "all lights and lamps in all the public buildings of said village, including public schools, churches, village halls and fire department houses, now erected or that may be hereafter erected during the continuance of this franchise, and three arc lights to be placed where said board or its successors shall designate, free of charge; supplying such lamps as will thoroughly light such public buildings."

The company also agreed to pay to the village during the continuance of the franchise ½ of 1 per cent of its gross earnings derived from business done within the village limits. The books of the company were to be opened for the inspection of the village so far as related to "the business, receipts and earnings" within the village limits.

The maximum charges to private consumers were not to exceed one cent an hour for a 16-candle-power electric incandescent lamp, and in the same proportion for other incandescent lights; and $100 for an electric arc light. All electricity required was to be

operated constantly and without cessation or interruption during the continuance of the grant.

This franchise contained clauses similar to those in other franchises in Staten Island relating to bonds to assure faithful performance of the grant, care of wires, lamps and poles, supervision of street work, injury to property, etc. The company also agreed to bury its wires "under ground and in subways to be approved by said Board of Trustees" within four months after being notified or requested to do so by the trustees or their successors "at all crossings of streets, avenues, highways, parks and public places where life and health of the public are endangered by its suspended structure." The determination of the village authorities was to be final on this point.

The trustees stipulated that the franchise "should not be deemed to confer or in any wise construed to be an exclusive right or privilege to and upon said company, * * *, and it is not intended in any wise to prevent or prohibit said village from granting rights or privileges or making any grant, exacting any consent or agreement with any party or corporation for similar purposes or objects."

This franchise was to "become and be null and void and wholly cease and determine upon the failure of said company, its managers, successors and legal representatives to keep and perform each, every and all of the terms, conditions and provisions contained herein and prescribed hereby." The company agreed under such circumstances to remove all wires, structures, poles, etc., above and underneath the surface of the ground at its own expense, from all the parks, highways, roads, streets, avenues and lanes of said village, and to restore the streets and public places to their original condition. In case the company failed to remove its fixtures as required the village was given the right to do so at the cost of the company, its successors or legal representatives, "which it or they shall pay 30 days after demand in writing."

The franchise was not to become "effectual for any purpose whatever until and unless" the company filed with the village clerk within 10 days its written acceptance. In case it failed to do so and to file a copy of its certificate of incorporation "then its franchise shall be null and void and of no effect whatsoever

without any further action by or on the part of the village of Tottenville, its officers, successors and legal representatives." The only "acceptance" of this franchise shown in the documents filed with the Public Service Commission is the signature "New York & Staten Island Electric Company, Edward P. Doyle, President," attached to the document under the name of the village president. It appears, however, from the document already referred to as being filed with the City Division of Franchises that the company by a statement under its seal, signed by its president and secretary, accepted the franchise on the day it was granted.

8. *Town of Westfield Franchises.*— The town of Westfield became Ward 5 of the Borough of Richmond. Franchise-granting power seems to have been claimed by both the town board and the highway commissioners. The Richmond Light and Railroad Company now operates in this district. The following are the only electric light franchises granted by the town authorities of the old town of Westfield, so far as the Bureau of Franchises has been able to find.

A. Highway Commissioners franchise, 1897.— On May 12, 1897, the Commissioners of Highways of the town of Westfield passed a resolution consenting to the erection of poles and stringing of wires in the streets of the town by the New York and Staten Island Electric Company for the purpose of furnishing commercial and street lighting and heat or power. It was stipulated, however, that such consent should be subject to conditions and regulations to be adopted and approved by the Highway Commissioners, and should not be complete until the acceptance and "confirmation thereof" by the company. It was also stipulated that the company should pay for drawing all the necessary papers. On June 2, 1897, the commissioners adopted a resolution stating that while they favored the actual erection of suitable poles and wires and the lighting of all the highways, streets and avenues under their control, they did not believe it right and were not in favor of "donating valuable franchises beyond such roads upon which such proposed improvements will be actually commenced and completed in good faith during our term of office and surrounded with every safeguard." This resolution contained the further declaration that "wanton and unnecessary donations of valuable franchises be not given to corporations prior to our com-

ing change of government, nor without proper security against injury to our highways." As a part of this resolution the New York and Staten Island Electric Company was requested to name the streets upon which the company would agree "to commence such improvements forthwith and complete the same during our present term of office, pursuant to such terms and conditions as we shall be advised by our counsel, together with adequate security for the performance of all the terms and conditions thereof and for the protection of our highways."

The grant was finally perfected and spread upon the minutes of the commissioners on June 16, 1897. By this resolution the company was authorized to occupy with its electric lighting fixtures "such streets, highways, avenues, public parks and places in said town of Westfield as they the said company shall designate and describe, and which said places, streets, avenues and parks this board shall hereafter adopt by resolution." The grant was made on condition that the company should commence the erection of its poles for the supply of electric light, heat and power on the designated streets within 30 days from the date of the grant, and should continue its work to completion on or before January 1, 1898. The usual provisions in regard to poles, wires, trimming of shade trees, street work, etc., also appear, and the company agreed to "furnish, operate and maintain all necessary electric lights for all fire engines or fire apparatus or hook and ladder companies within the present limits of said town outside of the village of Tottenville, and replenish and keep the same in proper repair during the term of this consent and free of all charges and costs in consideration therefor." It was further stipulated "that this consent shall not be absolute nor bar this board or its successors from granting like privilege to any other persons or corporations which they may deem for the best interests of the people." It was also stipulated that the consent should not include the right to run trolley cars or to supply motive power for them without a further consent granted by the highway commissioners or their successors. The company was required to give security or bonds in the sum of $10,000.

By another resolution adopted by the highway commissioners on September 1, 1897, the resolution just described was amended

by adding the following clause: "That such permission to lay, erect and construct suitable wires or other conductors with the necessary poles and other fixtures as therein set forth is extended to all streets, highways, avenues, public parks and places in the town of Westfield outside of the limits of the village of Tottenville in said town, subject, however, to the conditions and regulations set forth in said resolution, excepting requiring the same to be designated or described."

The franchise papers filed with the Public Service Commission by the present operating company do not include these resolutions of the Highway Commissioners of the town of Westfield.

B. Town Board franchise, 1897.— By resolution of the town board, September 23, 1897, an electric light franchise was granted to the New York and Staten Island Electric Company. By this franchise the company was given permission "to lay, erect and construct suitable wires or other conductors with the necessary poles or other fixtures, in, on, over and under the streets, avenues, highways, parks and public places of the town of Westfield, excepting the village of Tottenville, for the purpose of carrying on the business of lighting by electricity and furnishing electricity for heat and power to the public and to private parties in the said town of Westfield, excepting the village of Tottenville."

The special conditions which should be noted are that "the strength or power of said electricity [was] to be approved by said town board or its successors;" that the company agreed to furnish, operate and maintain "all lights and lamps in all the public buildings of the town, including public schools, churches, town halls and fire department houses now erected, or that may be hereafter erected, during the period of this franchise, free of charge, supplying such lamps as will thoroughly light such public buildings"; and that the company agreed to "bury all such wires and connections therewith under ground, and in subways to be approved by said Board within six months after being notified or requested so to do by the town board or its successors at all crossings of streets, avenues, highways, parks and public places where life and health of the public are endangered by its suspended structure and the determination of said Board or its successors shall be final."

The company's acceptance of this franchise is not shown in the records filed with the Public Service Commission.

It is recited in the "Whereas" clause of this franchise that the company has agreed to pay one-half of one per cent of its gross receipts into the town treasury. There is no such provision, however, among the conditions of the grant. Mr. Nichols states in his report that according to the records of the City Division of Franchises, Mr. Doyle appeared before the town board of the town of Westfield on April 30, 1897, as president of the New York and Staten Island Electric Company, offering one-half of one per cent of the company's gross receipts or $500 in cash for a franchise, and that on May 6, 1897, the committee to which his application had been referred, reported in favor of making the grant, whereupon the minutes of the town board show that a motion was carried by unanimous vote granting a franchise to the company. It does not appear why the company saw fit to have the franchise granted again by the same authority in the September following.

XXIII. Corporate History of the Richmond Light & Railroad Company (Electricity Division), and its Predecessor Companies.

On August 1, 1902, the Richmond Light Company was incorporated under the Transportation Corporations Law. Its objects, as declared in its certificate of incorporation, were "manufacturing and using electricity for producing light, heat and power and in lighting streets, avenues, public parks and places and public and private buildings of cities, villages and towns within the State of New York." On August 18, 1902, the company filed an amended certificate of incorporation, changing its name to Richmond Light and Railroad Company, extending the period of its corporate life from 50 years to 1,000 years, and enlarging its powers to include the construction of not to exceed 25 miles of electric railroad. This amended certificate was filed under the provisions of chapter 676 of the Laws of 1892, amending section 21 of the Railroad Law.

In August, 1902, the Richmond Light Company and the Richmond Light and Railroad Company acquired by purchase the property of the Staten Island Electric Railroad Company, the Richmond County Power Company and the New York and Staten Island Electric Company. It is unnecessary in this report to

trace back the history of the Staten Island Electric Railroad Company, as this company never obtained any electric lighting franchises or did any electric lighting business.

The Richmond Power Company was incorporated June 27, 1900, under the Transportation Corporations Law, for the purpose of manufacturing and supplying electricity for light, heat and power in public and private places in the Borough of Richmond and City and State of New York and other purposes.

It will be noted that this company was incorporated after the County of Richmond had been annexed to the City of New York, and the records of the city do not show that the company ever received a franchise for the use of the streets. It is recited, however, in the mortgage of the Richmond Light and Railroad Company to the Guaranty Trust Company of New York, trustee, dated July 1, 1902, that certain real estate, together with electrical engines and other power machinery, were conveyed by the Richmond Power Company to the Richmond Light Company by deed dated August 13, 1902.

Prior to the change of the Richmond Light Company into the Richmond Light and Railroad Company, John Greenough, as permanent receiver, had conveyed the property and franchises of the New York and Staten Island Electric Company to the Richmond Light Company by deed dated August 16, 1902. The New York and Staten Island Electric Company was incorporated January 13, 1897, under the Transportation Corporations Law, for the purpose of manufacturing and using electricity for light, heat and power in public and private places. The amount of its capital stock was originally fixed at $500,000, but was increased by a certificate filed December 27, 1897, to $1,500,000. The company's certificate of incorporation recited that it was to operate in the town of Castleton, Richmond County, New York. As already set forth in this report, this company, during the year 1897, received franchises or electric lighting contracts, or both, from most of the villages and towns on Staten Island. No record has been found to show that the company ever amended its certificate of incorporation so as to include other towns and villages besides Castleton (New Brighton) within the declared field of its corporate operations. The company acquired, however, by bills of

sale dated February 10, 1897, various properties of the Richmond Borough Electric Company, the Port Richmond Electric Company and the Richmond County Electric Light Company, all of which had been operating in portions of Richmond County.

The Richmond Borough Electric Company had been incorporated August 24, 1896, under the Transportation Corporations Law, for the manufacture and use of electricity for light, heat and power in public and private places and for the sale of the same in New Brighton, Edgewater, Port Richmond and other towns located in the County of Richmond. The amount of the company's capital stock was fixed at $400,000. In its bill of sale to the New York and Staten Island Electric Company "all of its property, rights, privileges and franchises and every part thereof, all and every interest therein" and more particularly as set forth in a schedule accompanying the bill of sale, were transferred in consideration of $295,000 of the capital stock and $200,000 of the first mortgage 5 per cent 50-year gold bonds of the New York and Staten Island Electric Company.

A reference in the minutes of the village of New Brighton, to which attention has already been called in this report, would seem to indicate that this company succeeded to all the rights and poles of the Electric Power Company of Staten Island. The latter company's "Livingston plant" was transferred on February 27, 1897, directly to the New York and Staten Island Electric Company by the receiver for the Electric Power Company. It is shown by Mr. Nichols' report that the property and franchises of the Electric Power Company were sold by the receiver in 1896 to William R. McCormick, and by him transferred in the same year to Austin B. Fletcher, who in all probability transferred them at some time prior to November 6, 1896, to the Richmond Borough Electric Company, although no positive proof of such transfer has been found in the records.

The Electric Power Company of Staten Island had been incorporated June 8, 1892, under the Business Corporations Law, to furnish, lease and sell electric light and power in the village of New Brighton, County of Richmond. This appears to have been a Wiman company, as William Dwight Wiman and Erastus Wiman were two of the five directors named for the first year.

The capital stock of the company was fixed at $250,000. This company appears to have succeeded to a portion of the property of the Richmond Light, Heat and Power Company, Limited, through one of the Wimans. At any rate the Electric Power Company carried on public lighting in the villages of New Brighton and Edgewater after the Richmond Light, Heat and Power Company, Limited, had ceased to operate in those localities. An interesting sidelight is thrown on the history of this company by a letter now on file among the papers in the custody of the Deputy City Clerk at St. George, dated June 23, 1896, in which Henry Dun Wiman writes to the Board of Trustees of the village of Edgewater as the purchaser on behalf of the creditors of his father (Erastus Wiman) of the electric light plant at St. George and the poles and wires located in the village of Edgewater, and asks that the village renew its contract for public light with Albert B. Boardman, receiver of the Electric Power Company. He states that his father's creditors have control of the plant at Livingston.

The balance of the property of the Richmond Light, Heat and Power Company, Limited, not including the company's franchise, was sold under foreclosure of mortgage October 31, 1896, to the Richmond Borough Electric Company for the sum of $95,000. The deed carrying this sale into effect was, according to Mr. Nichols' report, executed by George J. Greenfield, referee, on January 5, 1897.

The Richmond Light, Heat and Power Company, Limited, was incorporated April 7, 1887, under the Business Corporations Law of June 21, 1875, and its amendments. The purposes of the company as declared in its certificate of incorporation were " to produce, furnish and supply heat for dwellings and other buildings, and power for manufacturing, mechanical and other purposes, and to manufacture and supply artificial, electrical or gas light for lighting streets, avenues and public and private buildings and dwellings in the villages and towns of Richmond County." On July 15, 1887, the company filed a certificate increasing the amount of its capital stock from the original sum of $50,000 to $200,000. On February 8, 1888, the capital stock was further increased to $300,000, but on October 10, 1890, the amount of

stock was decreased to $150,000. As already shown, this company originally secured franchises or public lighting contracts in Edgewater, Port Richmond and New Brighton, but none of its franchises appears to have been transferred. It appears that as early as February 28, 1890, Erastus Wiman was president of this company. In a letter of that date W. Dwight Wiman certified to the Board of Trustees of the village of Edgewater that the wiring of the village hall had been properly done. It appears from another letter to the village trustees, dated May 16, 1892, that W. Dwight Wiman was general manager.

Mr. Nichols calls attention to the fact that this company was incorporated under the Business Corporations Law and was therefore not authorized to receive franchises from the local authorities for the use of the public streets. It should be noted in this connection that prior to the passage of the Transportation Corporations Law in 1890 many electric light companies had been incorporated under the General Manufacturing Corporations Law of 1848, and had received and operated local franchises. Other companies had been incorporated under the Gas Light Corporations Law of 1848 as amended in 1879.

The Port Richmond Electric Company was incorporated April 7, 1894, under the Transportations Corporations Law for the purpose of manufacturing and using electricity for light, heat and power in public and private places in the towns of Castleton, Northfield, Middletown, Southfield and Westfield, Richmond County, New York. This company appears to have been organized by Charles H. Ingalls of Port Richmond for the purpose of taking over a public lighting contract which he had received from the village of Port Richmond. The amount of the company's capital stock was fixed at $50,000. By a bill of sale to the New York and Staten Island Electric Company, dated February 10, 1897, this company transferred "all of its property other than its real estate and buildings and fixtures, and all of its rights, privileges and franchises and every part thereof, and all and every interest therein" and more particularly as set forth in a schedule accompanying the bill of sale, in consideration of $100,000 of the capital stock and $75,000 of the first mortgage 5 per cent 50-year gold bonds of the New York and Staten Island

Electric Company. The property transferred is described in the schedule as follows: "All of the engines, boilers, dynamos, converters, transformers, metèrs, lamps, poles and wires now used by the company in supplying lights. All of the stock on hand and all of the personal property of whatever description now owned by the company."

Mr. Nichols states that on July 13, 1894, the Port Richmond Electric Company acquired from J. Frank Emmons the property and franchises of the Staten Island Light, Heat and Power Company, Limited, which Emmons had purchased at foreclosure sale on April 4, 1894, and which had been transferred to him by deeds on April 10, 1894. One of these deeds had been executed by Arthur H. Masten, master of the court, and one by the Staten Island Light, Heat and Power Company itself. In each of these deeds it is stated that the real and personal property of the company is transferred to Emmons as well as "all and singular the rights, privileges and franchises granted to the Electric Light Company under its contract with the village of Port Richmond, and which the Electric Light Company now hath and can exercise or shall hereafter acquire and possess under said contract."

In accordance with a report filed by counsel to the Board of Trustees of the village of Port Richmond December 6, 1889, it appears that the Staten Island Light, Heat and Power Company had been incorporated under the laws of New Jersey to carry out the terms of a contract awarded to the Montauk Construction Company as a result of its bid for public lighting in the village of Port Richmond submitted November 1, 1889, and accepted November 8, 1889. No record has been found in the Secretary of State's office at Albany of any certificate or statement filed there authorizing the company to do business in this state. The same may be said of the Montauk Construction Company. It appears that the property of the Staten Island Light, Heat and Power Company and whatever franchise rights, if any, it may have obtained from the village of Port Richmond, were transferred by the deeds already mentioned to the Port Richmond Electric Company in 1894.

The Richmond County Electric Light Company was incorporated September 8, 1896, under the Transportation Corporations Law for the purpose of manufacturing and using electricity for

light, heat and power in public and private places in the cities, lages and towns within the county of Richmond. Among the incorporators of this company were E. P. Doyle and John Comins, later president and secretary respectively of New York and Staten Island Electric Company. In the bill sale executed by the Richmond County Electric Light Compa to the New York and Staten Island Electric Company Febru 10, 1897, it is recited that the Richmond County Electric Li Company conveys " all of its property, rights, privileges and fr chises and every part thereof, all and every interest therein," more particularly described in a schedule accompanying the bill sale, in consideration of $100,000 of the capital stock and $75,0 of the first mortgage 5 per cent 50-year gold bonds of the Ne York and Staten Island Electric Company.

It does not appear that the Richmond Borough Electric Com pany, the Port Richmond Electric Company and the Richmon County Electric Light Company were ever merged into the New York and Staten Island Electric Company.

To summarize, the Richmond Light and Railroad Company (Electricity Division) appears to have succeeded to the property of eight electrical companies, as follows:

Richmond Light & Railroad Company (Richmond Light Company). Incorporated August 1, 1902; charter amended August 18, 1902. Acquired by purchase —
- Richmond County Power Company. Incorporated June 27, 1900.
- New York & Staten Island Electric Company. Incorporated January 13, 1897. Acquired by purchase —
  - Richmond Borough Electric Company. Incorporated August 24, 1896, probably acquired by purchase franchises and part of property of
    - Electric Power Company of Staten Island. Incorporated June 8, 1892, acquired by purchase part of property of
      - Richmond Light, Heat & Power Company, Limited. Incorporated April 7, 1887.
  - Port Richmond Electric Company. Incorporated April 7, 1894, acquired by purchase
    - Staten Island Light, Heat & Power Company. Incorporated under the Laws of New Jersey, 1889, which had acquired by transfer public lighting contract of
      - Montauk Construction Company (probably a New Jersey Corporation).
  - Richmond County Electric Light Company. Incorporated September 8, 1896.

The accompanying chart, entitled " Corporate History of Richmond Light & Railroad Company," shows the company's corporate development in both railroad and lighting divisions.

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XXIV. Existing Rights and Obligations of The Richmond Light and Railroad Company — Electricity Division.

The present rights of the Richmond Light and Railroad Company, so far as its electric lighting business is concerned, seem to be based upon the following original franchises granted by the local authorities of the old towns and villages of Staten Island and now claimed by the company, and in most cases filed with the Public Service Commission among the company's franchise documents:

(1) Franchise granted March 9, 1897, by the Board of Trustees of the village of New Brighton to the New York and Staten Island Electric Company.

(2) Franchise granted April 6, 1897, by the Board of Trustees of the village of Edgewater for a period of twenty years to the New York and Staten Island Electric Company.

(3) Franchise granted September 10, 1896, by the Board of Trustees of the village of Port Richmond to the Richmond County Electric Light Company.

(4) Franchise granted January 14, 1897, by the Commissioner of Highways of the separate road district of the town of Northfield to the Richmond County Electric Light Company.

(5) Contract awarded December 31, 1897, by the Town Board for the separate road district of the town of Middletown to the New York and Staten Island Electric Company. This award appears on the minutes as being for a public street lighting contract for a period of ten years. There is no evidence to show that the contract was ever executed, and apparently the proceedings in regard to the matter did not vest in the company any franchise rights.

(6) Franchise granted May 25 and May 26, 1897, and amended December 29, 1897, by the Highway Commissioners for the separate road district of the town of Southfield, to the New York and Staten Island Electric Company.

(7) Franchise granted August 30, 1897, by the Town Board of the town of Southfield to the New York and Staten Island Electric Company.

(8) Franchise granted June 2, 1897, and amended June 16, 1897, and September 1, 1897, by the Highway Commissioners of the town of Westfield to the New York and Staten Island Electric Company. No copy of this franchise was included among the papers filed by the present operating company.

(9) Franchise granted September 23, 1897, by the Town Board for the town of Westfield to the New York and Staten Island Electric Company.

(10) Franchise granted November 17, 1897, by the Board of Trustees of the village of Tottenville, for 25 years, to the New York and Staten Island Electric Company.

The various transfers of these franchises by which they came into the possession of the present company are shown in a graphical way on the accompanying chart entitled, " Electric Light and Power Franchises and Companies — Borough of Richmond."*

The validity of many of these franchises has been seriously questioned by Mr. Nichols, Engineer in Charge of the City Division of Franchises. He calls attention to the fact that the New York and Staten Island Electric Company, through which the Richmond Light and Railroad Company acquired all of its lighting franchises, was incorporated to carry on an electrical business in the town of Castleton, Richmond County, and that its certificate of incorporation was never amended to include other towns and villages in the county. He urges that under these conditions the company had no power to receive local consents for doing an electric lighting business outside of the town of Castleton, which, as already stated, was co-terminous with the village of New Brighton. This objection, if valid, would apply to all the franchises just enumerated except the first, and possibly the third and fourth. The latter two were originally granted to the Richmond County Electric Light Company, and were presumably valid. On Mr. Nichols' theory, however, they could not have been transferred to the New York and Staten Island Electric Company because the latter had no right to receive them.

Mr. Nichols makes the further point that after May 4, 1897, the date upon which the Greater New York charter was approved, the local authorities of the towns and villages had no power to grant franchises running past the period of their jurisdiction over the streets, which terminated December 31, 1897. In support of this proposition Mr. Nichols cites the case of *Blaschko* v. *Wurster,* 156 N. Y. 437, and *Hendrickson* v. *City,* 160 N. Y. 144, which are Court of Appeals cases, as well as two or three other cases decided by the lower courts. If this objection is well taken it would invalidate the fifth, sixth, seventh, eighth, ninth and tenth of the franchises above enumerated, all of these having been granted after May 4, 1897. It is clear from the decision of the court in the *Blaschko* v. *Wurster* case that no franchise granted after May 4, 1897, by the local authorities of municipalities included in the consolidation scheme could be granted for a longer

* Opposite page 202.

period than that fixed as a maximum in the Greater New York charter, that is to say, 25 years with possible renewals aggregating 25 years. It is also clear from the *Hendrickson* v. *City* case that the local authorities of the towns and villages had no power after the passage of the Greater New York Charter to enter into long-term contracts for public lighting that would bind the Greater City for many years past the expiration of the terms of office of the officials making the contracts. The court does not say just how far it might go in validating contracts extending over into the Greater New York period, but the decision makes it reasonably certain that no contract entered into by the town or village authorities after May 4, 1897, for a period as long as five years would be valid. This apparently would disbar any claim under the Middletown proceedings of December 31, 1897. In this particular case, however, as already stated, there is no evidence that a contract was actually executed, and the minutes of the local authorities do not show that any attempt was made to grant franchise rights other than such rights as were incident to the furnishing of public street lighting. It does not seem probable, however, that Mr. Nichols' point is well taken so far as it relates to the authority of the local bodies to grant franchises for a period of 25 years. There is reason to think that under the decisions, the town and village authorities had the same right to grant franchises after May 4, 1897, as before that date, except that the franchises could not be perpetual but would have to be limited to the periods prescribed in the charter of the Greater City. If this theory is correct it would appear that the franchises above enumerated granted by the Highway Commissioners and the Town Boards of Southfield and Westfield would be limited to 25 years from the dates of the several grants, and that the franchise granted by the Board of Trustees of the village of Tottenville, which was expressly limited to 25 years from November 17, 1897, would be valid so far as this point is concerned.

There is a further question in regard to the validity of certain franchises on account of the uncertainty as to what constituted the municipal authorities of towns or separate road districts within the meaning of the statute requiring their consent for the operations of electric light companies. If the Town Board was

the proper authority then franchises granted by the Highway Commissioners would be ineffectual. If, on the other hand, the Highway Commissioners were the proper authority franchises granted by the Town Board would be invalid. If the consent of both Town Board and Highway Commissioners was required then franchises granted by the two authorities on different terms and conditions would fall into an uncertain category. These questions apply primarily to the town of Northfield, where only the highway commissioner gave his consent, and to the towns of Southfield and Westfield, where both bodies gave franchises but on different conditions.

The electric franchises claimed by the Richmond Light and Railroad Company granted by the various towns and villages formerly having jurisdiction in the County of Richmond, were granted upon varying terms and conditions. Some of these franchises are long and elaborate, while others are brief and comprehensive. Only two of the nine franchise grants were specifically for limited periods. The most interesting features of the Staten Island electric franchises are those relating to compensation and free lighting service. The company's obligations along these lines in the several wards of the Borough of Richmond as set forth in the franchises may be summarized as follows:

(1) First Ward, which is the same as the old village of New Brighton or town of Castleton.

Compensation in money.— One-half of 1 per cent of gross receipts for first 10 years, and 1 per cent thereafter, payable annually by January 15th.

Free lighting.— While company has contract for public lighting it must furnish all necessary lights for fire department houses (but not exceeding fifteen 25-candle-power lights for each), for village hall and for public schoolhouses.

(2) The portion of Wards 2 and 4 included in the old village of Edgewater.

Compensation in money.— Three thousand dollars in cash within 20 days; one-half of 1 per cent of gross receipts for first 10 years, and 1 per cent for second 10 years, payable semi-annually June 1st and December 31st.

Free lighting.— While company has contract for street lighting it must furnish all necessary lights for fire department houses (not exceeding fifteen 25-candle-power lights to each), for village hall and for public schoolhouses; also three 5-light clusters for Washington Park.

(3) Portion of Ward 2 not included in the old village of Edgewater, which is the same as the old separate road district of the town of Middletown.

No franchise and no obligations for money payments or free lighting.

(4) Portion of Ward 3 included in the old village of Port Richmond.

Compensation in money.— One and one-half per cent of gross receipts for first five years; 3 per cent for second five years; 5 per cent thereafter.

Free lighting.— None.

(5) Portion of Ward 3 not included in the old village of Port Richmond, which is the same as the old separate road district of the town of Northfield.

Compensation in money and free lighting.— None.

(6) Portion of Ward 4 not included in the old village of Edgewater, which is the same as the town of Southfield outside of the village limits.

Compensation in money.— One-half of 1 per cent of gross receipts for first ten years, and 1 per cent thereafter; payable annually by January 15th.

Free lighting.—All necessary lights in public schools, fire department houses and churches.

(7) Portion of Ward 5 not included in the old village of Tottenville, which is the same as the old town of Westfield, outside of the village limits.

Compensation in money.— None.

Free lighting.— Company must furnish all lights and lamps for all the public buildings, including schools, churches, town halls and fire department houses, "supplying such lamps as will thoroughly light such public buildings."

(8) Portion of Ward 5 included in the old village of Tottenville.

Compensation in money.— One-half of one per cent of gross receipts, payable annually by January 15th; village counsel's fee of $250; village engineer's fees to be agreed upon between him and the company.

Free lighting.— Three arc lights and such lamps as will thoroughly light all public buildings, including schools, churches, village halls and fire department houses.

For the purpose of exhibiting in parallel columns the various provisions of the franchises of the present operating company Tables IX and X entitled "Analysis of Electric Light Franchises claimed by the Richmond Light and Railroad Company," have been prepared.

TABLE IX.— ANALYSIS OF ELECTRIC LIGHT FRANCHISES HELD OR CLAIMED BY RICHMOND LIGHT AND RAILROAD COMPANY — OLD VILLAGE GRANTS.

Original grantee.	Richmond County Electric Light Co.	New York & Staten Island Electric Co.	New York & Staten Island Electric Co.	New York & Staten Island Electric Co.
Local authority.	Board of Village Trustees.	Board of Village Trustees.	Board of Village Trustees.	Board of Village Trustees.
Date of franchise	Sept. 10, 1896....	March 9, 1897.....	April 6, 1897.....	November 17, 1897.
Territory covered by franchise.	Village of Port Richmond.	Village of New Brighton	Village of Edgewater...	Village of Tottenville.
Area.....	.9 square miles...	5.2 square miles.....	3.7 square miles.....	1.1 square miles.
Population of district in 1910	12,701.....	27,201.....	21,603.....	3,568.
Duration of franchise.	.....	.....	Twenty years from date.	Twenty-five years.
Scope of franchise.	Electricity for light, heat and power.	Lighting by electricity and using electricity for heat and power.	Lighting by electricity and using electricity for heat and power.	Lighting by electricity and furnishing electricity for heat and power.
When operation required to begin.	.....	.....	.....	Within three months from date of grant.
Compensation in money.	One and one-half per cent of gross receipts for first five years; three per cent. for second five years; five per cent. thereafter.	One-half of one per cent. of gross receipts for first ten years; one per cent. of gross receipts thereafter, payable annually by Jan. 15th	Three thousand dollars in cash within twenty days; one-half of one per cent. for first ten years; one per cent. for second ten years; payable semi-annually June 1 and Dec. 31.	One-half of one per cent. of gross receipts; payable annually by Jan. 15; village counsel's fee of $250; village engineer's fees to be agreed upon between him and grantee.
Free lights to be furnished.	.....	While grantee has contract for public lighting, all necessary lights for village hall, fire department houses (not exceeding fifteen 25-candle-power lights to each) and public school houses.	While grantee has contract for street lighting, all necessary lights for village hall, fire department houses (not exceeding fifteen 25-candle-power lights to each) and public school houses; also three 5-light clusters for Washington Park.	Three arc lights and such lamps as will thoroughly light all public buildings, including schools, churches, village halls and fire department houses.
Maximum rates for lighting.	.....	.....	Public lighting not to exceed bids of grantee for furnishing lights to other municipalities, $17.50 per lamp per annum to be maximum.	Commercial rates, one cent an hour for 16-candle-power incandescent lights and "$100 for an electric arc light."
Obligation to supply electricity.	.....	.....	So long as village asks for bids for street lighting grantee must offer to furnish lights.	All electricity required to be operated constantly during term of franchise when required for use. Electricity for heat and power to be constantly supplied, the strength to be approved by village authorities. Incandescent lights to be of 25-candle-power full strength.

TABLE IX.— ANALYSIS OF ELECTRIC LIGHT FRANCHISES HELD OR CLAIMED BY RICHMOND LIGHT AND RAILROAD COMPANY — OLD VILLAGE GRANTS — (*Continued*).

Right to regulate service reserved.	Subject to necessary and reasonable regulations prescribed by board of trustees.	.....	.....	Quality of light, power and heat to be approved by village trustees and village engineer, subject to State laws "and all reasonable regulations" by village trustees or engineer.
Publicity of accounts.	.....	.....	.....	Sworn report of gross receipts to be filed annually on Jan. 1. Books of account of grantee's "business receipts and earnings" within village limits open to inspection by village authorities.
Poles.....	.....	Must be thirty feet high, round or octagonal, neatly painted, color prescribed by village trustees.	Must be thirty feet high, round or octagonal, neatly painted, color prescribed by village trustees.	Must be at least thirty feet high, of iron, steel or wood; if of wood, straight and square or round; if round, of good sound timber, of uniform size, at least ten inches in diameter; neatly painted a color determined by village trustees.
Wires.....	.....	Must be properly insulated and dangerous places properly guarded or removed. Wires must be at least fifteen feet above crown of roadbed.	.....	Wires to be insulated; to be strung fifteen feet above crown of roadbed at crossing; to be kept in thorough working order.
Underground construction required.	.....	.....	.....	Grantee must bury wires at street crossings where public safety demands, within four months after notice from village trustees.
Excavations in the streets.	No work in streets, sidewalks or public places except according to plans filed, and approved by village trustees.	Streets to be restored within reasonable time to as good condition as they were in before excavations were made.	Streets must be restored to as good condition as before opening.	Must not interfere with safe passage of public; streets to be restored and surplus materials removed.
Right to inspect and supervise street work reserved.	.....	Underground construction, if any, to be under supervision of village engineer.	Underground construction to be under supervision of village engineer; tree trimming under supervision of village trustees.	.....
Trimming of trees.	.....	Trees not to be trimmed without consent of owners; trees upon sidewalks to be trimmed under direction of village engineer at grantee's expense.	Trees must not be trimmed without consent of village trustees.	Trees not to be trimmed without consent of owners.

TABLE IX.— ANALYSIS OF ELECTRIC LIGHT FRANCHISES HELD OR CLAIMED BY RICHMOND LIGHT AND RAILROAD COMPANY — OLD VILLAGE GRANTS — (*Concluded*).

Injury to buildings, fences, etc.	.....	Public or private buildings must be in nowise injured or destroyed.	.....	Buildings, trees, fences and other property not to be injured, interfered with or destroyed.
Indemnity bond.	.....	.....	.....	Before franchise takes effect and not later than Nov. 28, 1897, grantee must file bond of $10,000 for faithful performance of franchise conditions. Grantee guarantees village against damages.
Labor conditions	.....	Company must employ American citizens, residents of Richmond county wherever practicable.	Company must employ residents of Richmond county wherever practicable.	.....
Filing certificate of incorporation.	.....	.....	.....	Grantee must file certified copy of certificate of incorporation within ten days, in default of which franchise to be void without further action by village.
Acceptance of franchise required.	.....	Franchise conditional upon acceptance with assumption by grantee of all conditions.	Franchise in form of contract.	Must file acceptance within ten days. Also franchise in form of of contract signed by company.
Date of filing acceptance.	.....	Accepted, but no date given.	April 6, 1897.....	Contract signed November 17, 1897.
Grant exclusive..	No.....	.....	.....	No.
Grantee's "successors or assigns" recognized in franchise.	No.....	Yes.....	Yes.....	Yes.
Number of times franchise has been transferred.	Two.....	One.....	One.....	One.
Forfeiture.....	.....	.....	.....	Franchise to be forfeited if company fails to perform any of its conditions for fifteen days after written notice from village. In case of forfeiture grantee agrees to remove apparatus from streets or pay the cost within thirty days after demand in writing.

TABLE X.— ANALYSIS OF ELECTRIC LIGHT FRANCHISES HELD OR CLAIMED BY RICHMOND LIGHT AND RAILROAD COMPANY — OLD TOWN GRANTS.

Original grantee..	Richmond County Electric Light Co.	New York & Staten Island Electric Co.	New York & Staten Island Electric Co.	New York & Staten Island Electric Co.	New York & Staten Island Electric Co.
Local authority...	Commissioner of highways.	Highway commissioners.	Town board....	Highway commissioners.	Town board.
Date of franchise..	Jan. 14, 1897....	May 25 and May 26, 1897; amended Dec. 29, 1897.	Aug. 30, 1897....	June 2 and 16, 1897, amended Sept. 1, 1897.	Sept. 23, 1897.
Territory covered by franchise.	Town of Northfield outside of village of Port Richmond.	Town of Southfield outside of village of Edgewater.	Town of Southfield outside of village of Edgewater.	Town of Westfield outside of village of Totenville. Streets to be selected by company. Amended Sept. 1, 1897, to include all streets	Town of Westfield outside of village of Totenville.
Area.....	14.8 square miles.	10.5 square miles	10.5 square miles	15.9 square miles.	15.9 square miles
Population of district in 1910.	7,111.....	3,995.....	3,995.....	7,855.....	7,855.
Duration of franchise.	"Shall not be revocable except by due process of law."	Originally unlimited; made "perpetual" by amendment Dec. 29, 1897.	.....	.....	.....
Scope of franchise.	Electric lighting and power.	Lighting by electricity; using electricity for heat and power and furnishing heat, power and light to public and private parties.	Electricity for light, heat and power "for commercial purposes only."	Lighting by electricity; using electricity for heat and power and furnishing light, heat and power to public or private parties. Not to include right to run trolley cars or supply motive power therefor without further consent.	Lighting by electricity and furnishing electricity for heat and power.
When operation required to begin.	.....	.....	.....	Work to commence within thirty days from date of grant; be completed Jan. 1, 1898.	Within two months from date of grant.
Compensation in money.	.....	.....	One-half of one per cent. of gross receipts per annum for first ten years, and 1 per cent. thereafter: payable annually by Jan. 15.	.....	.....

TABLE X.—ANALYSIS OF ELECTRIC LIGHT FRANCHISES HELD OR CLAIMED BY RICHMOND LIGHT AND RAILROAD COMPANY—OLD TOWN GRANTS—(*Continued*).

Free lights to be furnished.	.....	All necessary lights in public schools, fire department houses and churches, number to be determined by highway commissioners.	All necessary or proper electric lights for fire department houses (not exceeding fifteen 25-candle-power lights to each); all necessary lights for public schools, number to be determined by county school commissioner.	All necessary electric lights for all fire engines or fire apparatus or hook and ladder companies within the limits of the town outside of the village of Tottenville.	Lights for public buildings, including schools churches, town halls and fire department houses "supplying such lamps as will thoroughly light such buildings."
Obligation to supply electricity.	.....	.....	.....	Must furnish light for public streets and buildings as grantee may contract for.	Electricity for heat and power to be constantly supplied during term of franchise, its "strength or power" to be approved by the town board
Poles.....	.....	To be at least twenty-five feet high, round or octagonal, kept neatly painted, color and kind of paint to be determined by highway commissioners.	Must be thirty feet high, round or octagonal, straight and neatly painted color determined by town authorities.	Must be at least thirty feet high and be kept at all times neatly painted.	To be at least twenty-five feet high above ground; straight, square or round; if round, of uniform size not less than eight inches in diameter; of sound timber; neatly painted a color determined by town board.
Wires.....	.....	To be strung fifteen feet above crown of roadbed at street crossings; properly insulated.	.....	Must be safely insulated and dangerous places properly guarded or removed. Must be strung at least fifteen feet above crown of roadbed at street crossings.	Wires and other appliances to be kept in thorough working order during term of franchise.
Underground construction required.	.....	When grantee puts wires underground, it must do so at its own expense	.....	.....	Grantee must bury wires at crossings where public safety demands, within six months after notice by town board.
Excavations in streets.	Grantee may enter upon the street for work "at all reasonable times."	.....	Streets to be restored to as good condition as before opening. Streets to be obstructed as little as possible and never left in dangerous condition.	All earth and macadam pavement to be replaced in as good condition as before.	Must not interfere with safe passage of public; streets to be restored and surplus materials removed.

TABLE X.— ANALYSIS OF ELECTRIC LIGHT FRANCHISES HELD OR CLAIMED BY RICHMOND LIGHT AND RAILROAD COMPANY — OLD TOWN GRANTS — (*Concluded*).

Right to inspect and supervise street work reserved.	.....	Underground work to be done in accordance with directions and under supervision of highway commissioners.	Underground construction, if any, to be under supervision of town authorities; trimming of town trees to be under supervision of town authorities.	Street work to be done under supervision of inspector appointed by highway commissioners and paid by company. Also to be done subject to further directions of highway commissioners.	Construction to be under supervision of inspector appointed by town board, to be paid $3 a day by grantee
Trimming of trees.	.....	.....	Trees not to be trimmed without consent of owners.	Trees not to be interfered with or trimmed without consent of owners; trees on sidewalks to be trimmed subject to further direction of highway commissioners at grantee's expense.	Trees not to be trimmed without consent of owners.
Injury to buildings, fences, etc.	.....	.....	Grantee not to injure, interfere with or destroy public or private buildings.	Public or private buildings must in nowise be injured or destroyed.	Buildings, trees fences and other property not to be injured, interfered with or destroyed.
Indemnity bond..	.....	.....	.....	Bond of $10,000 with two sureties, freeholders in New York. Each to justify in double the amount to insure compliance with terms and to indemnify town against damages.	Grantee to indemnify the town against loss occasioned by operations under franchise.
Acceptance of franchise required.	.....	Grant in the form of a contract signed by both parties.	Franchise conditioned upon acceptance by Oct. 1, 1897.	Copy of resolution to be mailed to president of company.	.....
Date of filing acceptance.	.....	May 26, 1897...	Sept. 18, 1897...	.....	.....
Grant exclusive...	.....	.....	.....	No.....	.....
Grantee's "successors or assigns" recognized in franchise.	No.....	No.....	Yes.....	No.....	No.
Number of times franchise has been transferred	Two.....	One.....	One.....	One.....	One.

The matter of free lighting, especially to churches and fire department houses, has been called to the attention of the Commission on several occasions by interested parties living in various portions of Richmond County. At the hearing held June 23, 1909, the matter of free lighting was taken up with the company's representatives, Mr. James F. Sims, Mr. J. E. Phillips and Attorney Adrian H. Larkin. The testimony on this point indicates that the company had not been paying all of the cash payments and had not been furnishing all of the free lighting required by the grants. The explanation offered of the former was that the company did not know what it was making because of the many unsettled bills which it held against the city. As to the latter, the company had billed the city for public buildings, even though the franchises required lighting to be furnished free. In some instances, where semi-public institutions had been charged, the payments had been rebated.

EXHIBIT I.

POPULATION AND AREA OF ELECTRIC LIGHT FRANCHISE DIVISIONS OF GREATER NEW YORK.

Old Name of Political Subdivision.	Area in sq. miles within present city limits.	Population 1910.	Present operating companies owning, controlling or claiming franchise rights.
City of New York (prior to June 5, 1895).	41.40	2,713,369	New York Edison Company. United Elec. Lt. & Pr. Co. Long Acre Elec. Lt. & Pr. Co.
Town of Westchester (excluding village of Williamsbridge).	13.20	31,958	Bronx Gas & Electric Co.
Village of Williamsbridge.....	1.20	9,750	Westchester Lighting Co.
Village of South Mt. Vernon (or Wakefield).	1.25	4,440	Westchester Lighting Co.
Village of Eastchester.....	1.10	500	Westchester Lighting Co.
Town of Pelham.....	3.20	2,467	Westchester Lighting Co.
City of Brooklyn (excluding New Utrecht and Flatlands).	47.20	1,539,823	Edison Electric Illuminating Company of Brooklyn.
City of Brooklyn.....	77.60	1,634,351	Edison Elec. Ill. Co. of Brooklyn (through control of Amsterdam Elec. Light & Power Co.)
Town of Flatbush (included in territory of Edison Elec. Ill. Co. of Brooklyn).	5.90	73,047	Flatbush Gas Company.
City of Long Island City.....	7.30	61,763	New York & Queens Elec. Light & Power Company.
Town of Newtown.....	23.00	105,219	"
Town of Flushing (excluding villages of Flushing, Whitestone and College Point).	28.80	9,212	"
Village of Flushing.....	1.65	15,366	"
Village of Whitestone.....	2.10	4,000	"
Village of College Point.....	1.90	8,563	"
Town of Jamaica (excluding villages of Jamaica and Richmond Hill).	52.70	37,245	"
Village of Richmond Hill (franchise for Broadway only).	1.00	12,676	"
Village of Jamaica (no franchise).	3.50	17,491	"
Town of Hempstead (portion within city limits, excluding village of Far Rockaway).	5.40	7,589	Queens Borough Gas and Electric Company.
Village of Far Rockaway.....	2.30	4,887	
Village of Rockaway Beach (included in Town of Hempstead).	.....	.....	"

EXHIBIT I. (Continued).

Old Name of Political Subdivision.	Area in sq. miles within present city limits.	Population 1910.	Present operating companies owning, controlling or claiming franchise rights.
Village of New Brighton (Town of Castleton).	5.20	27,201	Richmond Light & R. R. Co.
Village of Port Richmond	.90	12,701	"
Town of Northfield (excluding village of Port Richmond).	15.00	7,111	"
Village of Edgewater	3.70	21,609	"
Town of Middletown (outside of village of Edgewater. No franchise).	5.00	1,929	"
Town of Southfield (outside of village of Edgewater)	10.50	3,995	"
Village of Tottenville	1.10	3,568	"
Town of Westfield (excluding village of Tottenville).	15.90	7,855	"

Summary.

Present Operating Companies.	Area of franchise rights in sq. miles.	Population of franchise territory, 1910.
New York Edison Company, United Electric Light & Power Company, Long Acre Electric Light & Power Company	41.40	2,713,369
Bronx Gas and Electric Company	13.20	31,958
Westchester Lighting Company	6.75	17,157
Edison Electric Illuminating Company of Brooklyn	77.60	1,634,351
Flatbush Gas Company (also included in area of Edison Elec. Ill. Co. of Brooklyn).	5.90	72,351
New York & Queens Electric Light and Power Company	121.95	271,535
Queens Borough Gas and Electric Company	7.70	12,476
Richmond Light and Railroad Company	57.30	85,969

Note: In the above summary areas are included in some cases where the companies' franchise rights are doubtful, while areas are excluded where the companies have no claim to franchises except through the automatic operation of territorial expansion of the political subdivisions from which the franchises were originally acquired.

EXHIBIT II.

ELECTRIC LINES FRANCHISE.

The New York Electric Lines Company was incorporated in 1882 for the purpose of laying wires underground to be leased to telegraph, telephone and electric light companies. This company differed from the electrical subway companies later organized in that its purpose was not to construct conduits and rent duct space for the wires of other companies, but to lay its own wires and lease them to other companies for use.

The petition of the company for a franchise was presented to the Board of Aldermen January 9, 1883, and referred to the Committee on Ferries and Franchises. In its petition the company stated that over thirty companies in the city used electricity for various purposes, and that their wires, poles and cross-arms were so numerous as to be a positive nuisance. Of this entire number only two or three companies were able to put their wires under ground. The New York Electric Lines Company proposed to do this for all companies on equal terms.

On January 30 of that year the Committee on Ferries and Franchises reported that it had given a public hearing in regard to the matter and that no one had appeared to oppose the granting of the franchise. In reporting favorably upon the company's petition, the committee said:

"It appears to your Committee that there has come to be a public necessity that the overhead wires should be put under the ground, and that their unsightly poles should be removed from our streets. The net works of these wires have enormously increased and perhaps quadrupled in the last five years. The public inconvenience and the danger of these wires in case of fire, the great loss of life occasioned by them in recent signal instances, have raised a public clamor to which the newspaper press has given vehement expression throughout the United States. It has come to the notice of your Committee that in no cities of civilized nations except the United States have above-ground poles and their wires been tolerated. There are none in London, Paris, or Berlin, nor in any other principal European city. Your Committee believe that what is practicable in Europe is practicable in New York. It is presented that there is now being made in our State Legislature a determined effort by compulsory enactment to cause the removal of the wires and poles from the air spaces of the larger cities of the State. It seems to your Committee that adequate provision should be made in this City in ample time to meet the requirements

of such state legislation. It has been shown to your Committee that the Company seeking the present permission is possessed of and proposes comprehensive and efficient plans of laying a complete system of underground wires in this City in the shortest possible time, and so as to be permanent and without after annoyance in our streets.

"The feature, however, most favorable in the view of your Committee is that the New York Electric Lines Company proposes no monopoly in favor of any one large telegraph company, but that its lines shall be free on equal terms to all the numerous minor companies doing business in the City of New York, thus making it expedient that the work of putting wires underground may be done once for all, and making it unnecessary that the streets shall be continuously dug up for an indefinite time to come by a multitude of contending and rival companies. It has come to the knowledge of your Committee that such a comprehensive provision has already been secured by law in Boston, Mass., and is contemplated in many other cities of the country.

"In view, therefore, of the numerous public advantages and benefits to be gained by the adoption of adequate measures for placing all telegraph, telephone and electric light wires under ground out of harm and annoyance and danger in the proper use of the public thoroughfares of this City, and as a means of beautifying our streets and avenues of residences by the removal of the rough and towering poles and the wires now encumbering them, your Committee recommend granting the petition of the said New York Electric Lines Company and submit herewith for adoption by your Board the annexed resolutions."

The Board of Aldermen recommitted the matter to the Committee on Ferries and Franchises with instructions to ascertain the character and standing of the company and the names of its officers and directors. On the next day, January 31, the *New York Times* in a news article and an editorial stated that it had looked up the backers of the New York Electric Lines Company. According to the *Times* it looked as if the company was organized with the knowledge of the Western Union Telegraph Company. The company had been incorporated in October, 1882, by Sidney F. Shelbourne, William Force Scott, George L. Weed, Herbert P. Brush and Edward Barr.

Six weeks later, on March 13, 1883, the Committee on Ferries and Franchises again reported favorably upon the proposed franchise, with certain conditions additional to those contained in the first draft of the resolution. The committee did not report as to the standing of the company or the identity of its officers and directors. The franchise was passed, however, by a vote of 21 to 3. The *Times* stated the next morning that the franchise had been

railroaded through with no chance for discussion except on roll-call.

Two weeks later, however, the Board of Aldermen received from Mayor Franklin Edson a communication disapproving of the franchise resolution. In support of his veto Mayor Edson said:

"The right to use the public streets for purposes which involve the tearing up of pavements, excavations in the street and the consequent obstruction of crowded thoroughfares, with all the damage, annoyance and danger to life, limb and health which such obstructions and excavations occasion, should be granted only when great public benefits are to be realized. In the case of the overcrowded 'downtown' streets of the City such rights should not be granted unless these public benefits are positively assured and the work undertaken either by individuals or companies of undoubted responsibility and legality, or else by the City.

"The petition of Sidney F. Shelbourne, President, in behalf of the New York Electric Lines Company recites that 'the said Company was incorporated and organized under the laws of this State for the purpose of constructing, laying and maintaining lines or trains of wires in the Cities of New York and Brooklyn.' It appears from such investigation as I have been able to make that this Company at present exists only on paper and that its further development depends upon it obtaining the right to lay and maintain lines or trains of wires under the streets of New York and Brooklyn, which wires it proposes to lease to such corporations or individuals as may have occasion to use them for electrical purposes, and that from these sources alone the revenue of the Company is to be derived.

"It does not appear that the Electric Lines Company can in any sense be called a telegraph company, for it does not, as I understand it, propose to carry on to any extent the business of telegraphing, and I am advised that it is at least doubtful whether under existing general laws of the State such a company may be formed or not. If, however, such a company can be formed under existing laws the fact remains that the right to lay wires under the streets of this City has already been granted to three other companies, which have the wires and are already using them for electrical purposes, and the further fact that there is no sufficient evidence that the methods and devices proposed to be employed by the Electric Lines Company will answer the purposes for which they are intended. To grant the right asked for in the petition of Mr. Sidney F. Shelbourne would, in my opinion, be again to surrender the streets of the city for experimental purposes to a company of unknown responsibility, which would involve tearing up of pavements in any and all the streets and excavations therein to an unknown extent. In my opinion the privilege should not be granted."

The Mayor appended to his veto message a communication from the Corporation Counsel, George P. Andrews, in which the latter called in question the legality of the incorporation of such a company as the Electric Lines Company under the then existing general laws of the State.

On April 10 following, the Board of Aldermen took up the franchise and passed it over the Mayor's veto by a vote of 19 to 5. In the *New York Times* for April 11 Alderman O'Connor was quoted as saying with reference to this franchise that "he was convinced from the way the franchise had been handled that it might be called a child of fear, born of fraud, and having for its nurse a New York Board of Aldermen."

The franchise was accepted by the company under date of April 16, 1883. In its acceptance the company specifically obligated itself to observe "all the requirements, provisions, restrictions, conditions and limitations" contained in the franchise. These conditions were as follows:

First.— The company was to lay its conductors in spaces set apart for that purpose under the ordinance of December 10, 1878, reserving two lines along each route for the use of the City free of charge — one for the Police Signal System and one for the Fire Alarm Service. Under the terms of the ordinance referred to, no telegraph line or electrical conductor could be laid under the streets at such a depth from the surface that the necessary excavation would expose or endanger water or gas pipes or sewers or drains. In no case were the wires or conductors to be placed further than four feet from the curbstone, except in crossing streets, and the space used for placing such wires was in every case to be limited to two feet in width and two feet in depth.

Second.— Wherever the company should find it impossible to use the spaces described in the ordinance of 1878 on account of interference with manholes of sewer, gas, steam or water mains, or other underground impediments, the company was to vary the space by using equivalent spaces, with as little deviation from the original plan as possible.

Third.— In constructing its connection vaults and test boxes the company was not to extend them underground more than four feet in depth or two feet in any lateral direction beyond the limited spaces contemplated for lines of wires in the ordinance of 1878.

Fourth.— The company was required, in addition to furnishing free wires to the City, to pay into the city treasury, within ten days after taking up pavements, for each one thousand feet

in length of trench to be excavated "the maximum sum or sums of money which have been or which may hereafter be required of grantees or licensees to be paid under any general or special ordinance of the Common Council heretofore enacted, authorizing the laying of electrical conductors under the streets of the City."

Fifth.— The company was forbidden to transfer or dispose of the franchise without the further authority of the Common Council.

Sixth.— The company was forbidden to make any discrimination among individuals and corporations in the rental and use of its wires.

Seventh.— An option was reserved to the City at any time after January 1, 1885, to require the company to pay into the city treasury two per cent of its gross receipts in lieu of the donation to the City of the two wires in each line of conductors provided for in the general ordinance already referred to.

After the Commissioners of Electrical Subways were appointed to carry out the provisions of chapter 434 of the Laws of 1884, and chapter 499 of the Laws of 1885, the New York Electric Lines Company applied on July 27, 1886, to the Commissioner of Public Works for a permit to make excavations in certain streets of the City for the purpose of laying its conductors. This permission was refused and the company took the matter to the courts, but lost its case. The Court of Appeals decided in the case of *People ex rel. New York Electric Lines Co.* v. *Squire,* 107 N. Y. 593, that the company must first get the approval of the Electrical Subway Commissioners for its plans of construction before having any right to open the streets. The company had already submitted plans to the Subway Commissioners, but the plans had been rejected and the Subway Commissioners had accepted the plans of the Consolidated Telegraph & Electrical Subway Company and had entered into a contract with the latter company to construct the electrical subways needed in the old City of New York. The New York Electric Lines Company thereupon became quiescent, and continued so until 1905, when it made a new effort to get permission to construct subways or conduits under the surface of certain streets in New York. Permission was again refused by the city authorities and their action was

sustained by the courts on the ground that the right of the New York Electric Lines Company to construct its own subways lapsed in 1886, when it failed to secure the approval of the Subway Commissioners, and the City entered into a contract with the Consolidated Telegraph & Electrical Subway Company for the construction of electrical subways. (See *People ex rel. New York Electric Lines Co.* v. *Ellison,* 188 N. Y. 523.)

EXHIBIT III.

AREAS IN MANHATTAN AND THE BRONX SUPPLIED BY EDISON COMPANIES PRIOR TO CONSOLIDATION.

The map of the mains of the Edison Electric Illuminating Company of New York as they existed on December 31, 1899, just prior to the time when this company absorbed its allied companies, shows a net work of mains through the center of Manhattan as far north as East 95th Street. South of Canal Street the mains extended from river to river, except for a small district in the East Broadway section. North of Canal Street the mains covered several blocks on either side of Broadway and Fifth Avenue as far north as 59th Street. On the lower west side there was a line with several branches extending up Hudson Street as far as 14th Street. Above 59th Street the mains were for the most part limited to that section of the City east of Central Park between Lexington and Fifth Avenues.

The Edison Company also furnished a map showing the service of the Manhattan Electric Light Company, including the Harlem Lighting Company and the Madison Square Light Company, dated February 21, 1899. It will be remembered that these companies had been under the control of the Edison Company for a number of years prior to that time, but that their operating systems were kept separate for the reason that they used high tension wires and supplied alternating current. The principal lines of these companies as shown on this map were on the following streets: On Avenue A from Houston Street to 24th Street, and from 54th to 92nd Street; on First Avenue, from Houston to 125th Street; on Second Avenue from 14th to 128th Street; on Third Avenue and the Bowery from near Chatham Square to 130th Street; on Fourth Avenue from the Bowery to 42nd Street; on Broadway from Worth to 59th Street; on Sixth Avenue from 14th to 59th Street; on Seventh Avenue from 23rd to 59th Street; on Eighth Avenue from 14th to 59th Street; on West 8th Street and East 10th Street from Sixth Avenue to the East River; on 14th Street from the North to the East River; on 23rd Street from Seventh Avenue to the East River; on 34th Street from Sixth Avenue to the East River; on 42nd Street from

Sixth Avenue to Third Avenue; on 59th Street from Ninth Avenue to First Avenue; on 80th and 86th Streets from Third Avenue to the East River; on 125th Street from Lenox Avenue to the East River.

There were a few other short lines branching out from the main lines just enumerated.

The map of the circuits of the Mount Morris Electric Light Company, dated January 1, 1898, shows that the mains of this company were located almost exclusively in the westerly half of Manhattan. The area south of 14th Street and west of Broadway was pretty well covered by this company's mains. Quite a number of streets on the east side of Broadway below the City Hall were also occupied. The company also had mains running up Ninth and Columbus Avenues from Little West 12th Street to 108th Street, with branches running through a number of cross streets. On Eighth Avenue the company had mains from 102nd Street north to the Harlem River, with various branches. On Lenox Avenue there were mains from 111th Street north to 136th Street, and on Amsterdam Avenue from 154th Street north to 182nd Street. It appears that the Mount Morris Company's lines north of 136th Street are not now maintained by the New York Edison Company, all that territory having been abandoned to the United Electric Light & Power Company for operating purposes.

The service of the North River Electric Light & Power Company and of its predecessor, the North New York Lighting Company, was overhead service entirely, and was confined to that portion of The Bronx west of the Bronx River. According to a map showing conditions about January 1, 1899, the district below East 149th Street was pretty well covered with lines. North of that street there were lines on the Southern Boulevard as far as Westchester Avenue; on Westchester Avenue, on Boston Road, on Franklin Avenue, on Third Avenue, on Washington Avenue, on Park Avenue, on Webster Avenue to 179th Street, and from Fordham north to East 200th Street; on Jerome Avenue to Kingsbridge Road; on Sedgwick Avenue to Featherbed Lane; on East 161st Street from Central Bridge to near Westchester Avenue; on Tremont Avenue from Jerome Avenue to Boston Road; on Kingsbridge Road and West 230th Street from Fordham to Spuyten Duyvil Road; on Broadway from the first street

south of Spuyten Duyvil Creek to 242nd Street; on Sedgwick Avenue from Kingsbridge Road to Van Cortlandt Street, and on a number of other less important streets.

Only two maps showing electric light lines laid under "franchises" from the Board of Electrical Control have been furnished. One of these shows the Manhattan Lighting Company's lines uptown under date of October 28, 1899. This included the lines of the Block Lighting Company. The mains shown on this map were on both sides of Broadway from 22nd to 32nd Street, thence north on the east side of Broadway to 34th Street, with one line through Sixth Avenue from 34th Street to 31st Street and through 31st Street from Sixth Avenue to Fifth Avenue. The total length of mains and feeders was shown as 8,100 feet, all single conductor cables. The other map was an original, showing the lines of the New York Heat, Light & Power Company, dated October 4, 1898. It is to be noted that this company's mains were primarily for the distribution of power. They covered the portion of the City below Chambers Street with quite a net work of wires. This map shows 41,157 feet of ducts occupied by this company, and 34,318 feet of ducts assigned to the company but unoccupied.

A table is in evidence showing the mileage by years of the Edison underground system from 1881 down to and including 1908, except for certain of the early years for which there are no records. Other tables show the mileage of ducts assigned by the Consolidated Telegraph & Electrical Subway Company to various electric light and power companies for the years 1889 to 1903, inclusive, and the mileage of ducts assigned by the high tension subway company to the New York Edison Company for the years 1904 to 1908 inclusive. These two tables were not prepared on quite the same basis. One shows the miles of Edison circuits actually in use in conduits; the other shows the miles of high tension ducts rented to the various electric light and power companies, whether occupied or not. It is possible, however, from these two exhibits to make up a statement which will show approximately the relative importance of the various companies at a given date. On December 31, 1899, the mileage of ducts occupied or held for occupancy by the electrical conductors of the

various original electric light and power companies in the New York Edison system was substantially as follows:

	Miles.
Low tension ducts of the Empire City Subway Company, Limited: —	
Edison Electric Illuminating Company	264
High tension ducts of the Consolidated Telegraph & Electrical Subway Company:—	
Edison Electric Illuminating Company of New York	38
East River Electric Light Company	9
Thomson-Houston Electric Company	3
Madison Square Light Company	4
Manhattan Electric Light Company, Ltd.	42
Harlem Lighting Company	10
Total for the Edison and affiliated companies	106
Mount Morris Electric Light Company	38
New York Heat, Light & Power Company	9
Block Lighting & Power Company No. 1 (purchased by Manhattan Lighting Company)	2
Total for the companies affiliated with the Power Company	49

Rearranged according to franchises under which these mains were laid the mileage of ducts held for occupancy would be as follows:

Under the original Edison franchise	302
Under the East River franchise	20
Under the Harlem franchise	10
Under the Mount Morris franchise	38
Total under valid franchises	370
Under the Manhattan Electric Light Company, Limited, "franchise"	38
Under the New York Heat, Light & Power Company "franchise"	9
Under the Block Lighting & Power Company No. 1 "franchise" (purchased by Manhattan Lighting Company)	2
Total under invalid franchises	49

It should be noted that these figures do not include overhead lines, which for the most part were being operated at that time by the North River Electric Light & Power Company in the Borough of The Bronx under a valid franchise.

The date selected for this comparison, namely, December 31, 1899, was just prior to the dates upon which the various subsidiary companies of the Edison Company and the Power Company were merged, and about a year and a half prior to the date of the organization of the New York Edison Company by the consolidation of its two constituents. At the end of 1899 there were approximately 419 miles of underground electric light and power circuits operated by this system of companies. This mileage more than doubled during the nine years following this date. On December 31, 1908, the New York Edison Company was operating 1,019 miles of underground electrical circuits, practically all in the Borough of Manhattan. During the last nine years undoubtedly many of the old conductors have been replaced and all the new lines laid may have been laid under valid franchises.

EXHIBIT IV.

DATA AS TO COMPETITION IN MANHATTAN.

North of 136th Street, except on the Harlem Speedway, only one company is supplying electric light, the United Electric Light & Power Co. There is an understanding between the United and the Edison companies to the effect that this territory should be left exclusively to the United Company. South of 136th Street both companies have mains in many of the streets, the Edison Company supplying direct current and the United Company supplying alternating current. In regard to this territory, Mr. Smith testified as follows (page 1521):

"Q. Now, what is the general arrangement that you have as to putting your mains in streets where the Edison Company already has mains? A. Well, I should say, generally, Mr. Commissioner, that the understanding is that the existing system will not be parallelled, and if the alternating current company, United Company, has existing service in front of a man's premises, who desires our service, the company will give it to him. If, on the other hand, we have no mains, and the Edison Company are there, it is not the policy of the company, unless the consumer's requirements call for alternating current, to parallel the existing service."

Mr. Smith was questioned as to the reasons for retaining the United Electric Light & Power Company's independent competing service, inasmuch as the two companies are both under the control of the Consolidated Gas Company. On this point also his testimony is of interest. His position is stated at page 1747, as follows:

"Q. If your company were not in existence, Mr. Smith, and your plants were not in existence, would it be essential to the Edison Company or some other company supplying the same territory to establish a plant like yours or a system like yours? A. Yes. At any rate, the business would, of course, have to be taken care of. The system of the United Company is entirely alternating current supply, with a business extending very generally over the entire Borough of Manhattan and supplying at the present time exclusively that territory north of 135th Street. Its customers number in excess of 15,000, the connected equivalent in 16-c. p. lamps amounts to approximately 725,000, within which there is more than 11,000 h. p. in alternating current motors connected, as well as Moore tubes, electrical welding and other miscellaneous uses of the service to which alternating current is exclusively adaptable. An enormous investment would be required to replace the apparatus which would include, not only the motors, but all arc and incandescent lamps and other miscellaneous devices, and, of course, the generating plant

would have to be provided for, as well as the necessary changes i
and other distributing apparatus which would be a very materia
considerable of an undertaking from an engineering standpoint. T
ing current service of this Company is entirely different in cha
the direct current of the New York Edison Company, and o
could not supply the service of the other company without, a
complete change, not only in the generating equipment, but in
individual apparatus at the customers' premises. It should be
that alternating current was first introduced in New York C
and 1890, and the introduction of the service throughout the ci
general before the companies were in any way allied. There we
amples of joint supply of both direct current and alternating cu
both characters of service are required by the consumer. All of
ment from an electrical supply standpoint north of 135th Street i
on this Company's system of alternating current exclusively."

From the evidence obtained, it appears that the comp
parallel lines running through many of the main s
avenues and a considerable number of cross streets fro
tery north to 136th Street. The accompanying ma
"Duplication Map of Electric Light Companies in M
shows the streets in the Borough of Manhattan on v
companies have mains.

In the course of the inquiry relative to the developn
mergers and consolidations, Mr. Lieb was asked to give
as to the amount of plant and property which were fou
been duplicated by the various companies. In answer tc
tion he testified as follows (page 1508):

"Mr. Lieb: Well, that is a very difficult and intricate prop
course, a vast amount of the properties disappeared in the proces
and consolidation, and their systems were thrown out of service,
ally their customers and mains, feeders and conductors, were t
the Edison system, and little by little their plants were put out
and the service standardized, as they were giving indifferent servi
ing the means of control and regulation and storage battery reser
feeders of the larger system, so that little by little, between the ye
and, well, extending pretty close to 1901, those plants were gradu
out of service and dismantled, the apparatus sold or junked, and
transferred, and that process, on a smaller scale, is more or less
at the present day, so as to keep the plant that we have in a hi
efficiency.

"Commissioner Maltbie: Yes; that process is due to changes
but the consolidation and elimination —

"Mr. Lieb: (Interrupting) Not altogether; in a way, yes, bu
gether. Many of those changes came as a result of the evolution
became possible, on a very much larger scale, under more econom

tions, making it unwise to continue the local plants in operation, so that within these years we have had stations, like the Fifty-third Street station, which was originally equipped by the Edison Company, and had its plant all complete, boiler, engine and dynamo equipment, which were completely taken out, so that it is today purely a distributing station. The Thirty-ninth Street station was at one time a completely equipped station, built as a modern plant, and well equipped as an electric light station from top to bottom. That has been completely dismantled, and all engines, boilers, and dynamos taken out, and that is practically a distributing station. The Twenty-sixth Street station is at this moment thrown down, and all of the engines, and all boilers, although of comparatively recent type, have been junked, and that station is about to be rebuilt as a large distributing station alone, and these are only examples of the continual process that is going on.

"Q. Have you anything to show how much of the plants that went into the consolidation became unnecessary after the consolidation? Is there anything to show that? A. Why, I have not any data as to the plants.

"Q. There was no inventory taken of the property when you merged, was there? A. None that I have ever seen. My own relations to those properties came about rather after the act of joining the New York Gas & Electric Light, Heat & Power Company, and the Edison Electric Illuminating Company, to make the New York Edison Company. My own relations to the constituent properties of the New York Gas were very indirect, so that I have no inventory. I doubt whether any such inventory exists of what these smaller plants were. I would know, of course, what there was in the Manhattan Company and the Harlem Company, and, of course, all of those Edison plants that I have referred to."

would have to be provided for, as well as the necessary changes in the cable and other distributing apparatus which would be a very material item and considerable of an undertaking from an engineering standpoint. The alternating current service of this Company is entirely different in character from the direct current of the New York Edison Company, and one company could not supply the service of the other company without, as stated, a complete change, not only in the generating equipment, but in all of the individual apparatus at the customers' premises. It should be understood that alternating current was first introduced in New York City in 1889 and 1890, and the introduction of the service throughout the city was very general before the companies were in any way allied. There were many examples of joint supply of both direct current and alternating current where both characters of service are required by the consumer. All of the development from an electrical supply standpoint north of 135th Street is, as stated, on this Company's system of alternating current exclusively."

From the evidence obtained, it appears that the companies have parallel lines running through many of the main streets and avenues and a considerable number of cross streets from the Battery north to 136th Street. The accompanying map, entitled "Duplication Map of Electric Light Companies in Manhattan" shows the streets in the Borough of Manhattan on which both companies have mains.

In the course of the inquiry relative to the development of the mergers and consolidations, Mr. Lieb was asked to give some idea as to the amount of plant and property which were found to have been duplicated by the various companies. In answer to this question he testified as follows (page 1508):

"Mr. Lieb: Well, that is a very difficult and intricate proposition. Of course, a vast amount of the properties disappeared in the process of merger and consolidation, and their systems were thrown out of service, and gradually their customers and mains, feeders and conductors, were thrown onto the Edison system, and little by little their plants were put out of service, and the service standardized, as they were giving indifferent service, not having the means of control and regulation and storage battery reserve, and the feeders of the larger system, so that little by little, between the years of 1898 and, well, extending pretty close to 1901, those plants were gradually taken out of service and dismantled, the apparatus sold or junked, and customers transferred, and that process, on a smaller scale, is more or less continuing at the present day, so as to keep the plant that we have in a high state of efficiency.

"Commissioner Maltbie: Yes; that process is due to changes in the art, but the consolidation and elimination —

"Mr. Lieb: (Interrupting) Not altogether; in a way, yes, but not altogether. Many of those changes came as a result of the evolution, where it became possible, on a very much larger scale, under more economical condi-

tions, making it unwise to continue the local plants in operation, so that within these years we have had stations, like the Fifty-third Street station, which was originally equipped by the Edison Company, and had its plant all complete, boiler, engine and dynamo equipment, which were completely taken out, so that it is today purely a distributing station. The Thirty-ninth Street station was at one time a completely equipped station, built as a modern plant, and well equipped as an electric light station from top to bottom. That has been completely dismantled, and all engines, boilers, and dynamos taken out, and that is practically a distributing station. The Twenty-sixth Street station is at this moment thrown down, and all of the engines, and all boilers, although of comparatively recent type, have been junked, and that station is about to be rebuilt as a large distributing station alone, and these are only examples of the continual process that is going on.

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EXHIBIT V.

RECORD OF SEELY FRANCHISE.

The New York and Queens Electric Light and Power Company has filed various documents with the Public Service Commission to establish its chain of title to the franchise originally granted by the highway commissioners of the town of Newtown, June 12, 1891, to John A. Seely and associates under the name "Newtown Electric Light Company." One of these documents, which is the quit-claim of John A. Seely to Thomas W. Stephens, recites that "in or about the month of May, 1891, I, John A. Seely of the City of Syracuse, State of New York, formed a certain partnership with one Morris Bookman and Henry Kellart, under the name and style of Newtown Electric Light Co.," and that "said partnership obtained a franchise from the Commissioner of Highways of the Town of Newtown, Long Island, for the erecting of poles and laying of tubes in public highways of said Town for the purpose of electric light," and that "thereafter on or before July 29, 1891, said partnership transferred said franchise to me," and that "thereafter I transferred said franchise to the Newtown Electric Light & Power Co., of which said Company I became the owner and still am the owner of 1,496 shares of a possible 1,500 shares of its stock," and that "through certain other transfers and assignments said franchise became the property of one James Harold Warner of the City of New York," and that "said Warner is about to transfer said franchise to Thomas W. Stephens, of the City of New York." In view of the conditions just recited and in consideration of the sum of one dollar paid by Stephens, and for the purpose of inducing him to purchase the franchise from Warner, Seely assigned and transferred to Stephens all his right, title and interest in this franchise, or any part of it which he still possessed "no matter from whatsoever source the same may have been received or obtained." He further agreed to furnish any other and further instrument desired by Stephens which would assist the latter in getting a good title to the franchise.

At the end of the copy of the franchise filed by the company with the Commission are the words:

"This franchise assigned to John A. Seely July 29, 1891.
"Newtown Electric Light Co.
"Morris Bookman, Prest.
"Henry Kahlert, Secty.

"This franchise assigned to the Town of Newtown Electric Light Co. by John A. Seely for 997 shares of the capital stock of the Newtown Electric Light Co.

"(Signed) John A. Seely.

"Filed July 30, 1891.
"J. H. Sutphin, Clerk."

In a letter dated May 8, 1908, the New York & Queens Electric Light & Power Company, which claims the present ownership of this franchise, states that "in the second assignment it was intended to convey the franchise to the Newtown Electric Light & Power Company, to which the assignment was actually delivered, there being no corporation at any time in existence of the name of 'Town of Newtown Electric Light Co.' and the misnomer in the assignment being an inadvertence."

Among the documents filed by the company there is an instrument, however, executed by Henry C. Adams, receiver of the Newtown Electric Light & Power Company, under date of October 13, 1894, by which certain property of the company was transferred to J. H. Warner, in consideration of the sum of $1,100. This property consisted of various light transformers, incandescent lamps, arc lamps, insulators, copper wire, dynamos, and other electric light apparatus, an artesian well, a boiler, etc., "and all the other property of said defendant Company wherever the same is situated," except one frame building and certain specified apparatus. The instrument stated that the property above described was on the premises of the company in Newtown, Long Island, or on the streets or public places in Newtown. It further stated that the sale by the receiver to Mr. Warner was by virtue of an order of the United States Circuit Court dated June 30, 1894, and of the Court of Chancery of the State of New Jersey, dated July 23, 1894; that the sale had been duly advertised and the property sold to Warner, the sale having been thereafter confirmed by the United States Circuit Court on September 11, and by the Court of Chancery on September 24, 1894. The actual date upon which the award was made to Warner is not given, but the instrument of transfer was executed, as already stated, on October 13.

On August 31, of the same year, six weeks before Warner received the formal transfer from the receiver of the company, he in turn transferred the property to P. J. Bennett. In the agreement of sale it was stated that Warner purchased "a certain property on the 20th day of August, 1894, at Bushwick Junction, Long Island (said property theretofore belonging to the Newtown Electric Light Co.), from Henry C. Adams, Jr., Receiver of said Company." It also stated that Bennett was anxious to obtain the property bought by Warner, "subject to all or any claim or claims which the said Receiver may have upon him, the said Warner," inasmuch as Bennett had also purchased at the same time certain other property from the receiver. Accordingly in consideration of the sum of one dollar, Bennett purchased and Warner sold, assigned and "set over all his right, title and interest in and to the aforesaid property hereinbefore described as having been purchased by him at said sale."

No specific reference was made either in the receiver's transfer to Warner or in Warner's transfer to Bennett of any franchise. Five years later, however, on October 2, 1889, Bennett retransferred the property to Warner, describing it as "property heretofore belonging to the Newtown Electric Light & Power Co." purchased by Warner from Henry C. Adams, Jr., receiver, on August 20, 1894, and transferred by Warner to Bennett on August 31, 1894. In the receiver's transfer Warner is simply "J. H. Warner." In Warner's transfer to Bennett the former has come to be "James H. Warner." In Bennett's retransfer to Warner the latter appears as "James Harold Warner." The consideration in this last transfer is given as one dollar, "and other good and valuable considerations." "I hereby transfer, set over and assign," says Bennett in this paper, "unto said James Harold Warner all my right, title and interest in and to any franchise, right or easement to manufacture, vend, sell and deliver electricity for lighting or power purposes, or constructing tubes, conduits or pole lines for electrical purposes, through or in the said Town of Newtown, or in or about the vicinity thereof, which I have received from any source whatsoever, including the said instrument in writing described herein from said Warner to me. I further covenant and agree to make any further and other in-

strument, or to do any further or other act which will divest or transfer from me any right or interest which I may have in said franchises, right or easement as aforesaid."

In a deposition accompanying this transfer Bennett says, referring to the property which he obtained from Warner on August 31, 1894, that he "is informed and believes that said instrument conveyed to him a certain franchise in the Town of Newtown, Long Island," and "that he has never transferred said franchise or any part thereof to any one by assignment or otherwise, and if he did receive the ownership of said franchise at that time he now owns the same." He also states that the property described in the mortgage from the Newtown Electric Light & Power Company to the Fort Wayne Electric Company was taken possession of by the latter company, and that the lamps, transformers, insulators and other chattels purchased by him from Warner were transferred to the Rockaway Electric Light Company. He further says that according to his information and belief none of the property purchased by him from Warner in 1894 "consisted of the property contained on the pole lines of said Rockaway Electric Light Co."

In Warner's transfer to Thomas W. Stephens under date of October 6, 1899, it is recited that the purchase from Henry C. Adams, receiver of the Newtown Electric Light & Power Company, was of "certain property" on or about October 13, 1894. "I believe, and it is supposed," says Warner in this transfer, "that the aforesaid purchase included a franchise belonging to the Newtown Electric Light & Power Co. to lay tubes, construct and operate pole lines for the purpose of electric lighting in and through the City and Town of Newtown of Long Island;" "I thereafter transferred all my right, title and interest in and to said property, including said franchise, to Philip J. Bennett;" "and said Philip J. Bennett thereafter and on or about the second day of October, 1899, transferred to me by an instrument in writing (the original of which is hereto annexed) all and every my right, title and interest to said franchise;" and "Charles F. Mathewson, for and on the part of certain of his clients, has this day offered to purchase such right, title and interest in and to said franchise as I now possess upon certain terms and conditions, it being under-

stood that I have never as yet disposed of said franchise, except as aforesaid to said Bennett." In view of these facts and in consideration of the sum of one dollar and "other good and valuable considerations," "I hereby and by this instrument," says Warner, "sell, assign, transfer, set over and convey unto Thomas W. Stephens, his personal representatives and assigns, all and every my right, title and interest in and to said franchise, right of way, license or easement, to build, construct or operate tubes, ducts or conduits, in, upon or under the streets, or to construct, build, operate or maintain pole or wire lines in, upon, through and over the streets of the Town of Newtown, Long Island, which I now own or which I may have received the ownership of from any source whatsoever, including the transfers hereinbefore recited and referred to. I further covenant and agree to do any other act or execute any further instruments which will more clearly convey the title or ownership intended herein to be conveyed, it being understood that I do not in any manner warrant the title to such property, but merely convey such right and ownership as I now have." It will be noted that this instrument was executed on October 6, 1899. On the succeeding day the transfer already described as being made by John A. Seely of Syracuse to Thomas W. Stephens was executed.

On November 4 following, Thomas W. Stephens transferred his right to the franchise in question to the New York & Queens Gas & Electric Company. This instrument recited the original sale of certain property by Henry C. Adams, receiver, to James Harold Warner on October 13, 1894, the sale being supposed to include "a franchise belonging to the Newtown Electric Light & Power Co. to lay tubes, construct and operate pole lines for the purpose of electric lighting in and through the City and Town of Newtown, Long Island;" and the transfer "thereafter" of the property "including said franchise," to Bennett, and the retransfer to Warner on October 2, 1899, of Bennett's "right, title and interest" to said franchise, and Warner's transfer to Stephens on October 6, 1899. Stephens by this instrument conveyed to the New York & Queens Gas & Electric Company, its assigns and successors all of his right, title and interest to this "franchise, right of way or easement" which he then had or of which he may

have received ownership from any source whatever, "including the transfers hereinbefore recited and referred to." Nothing is said in this instrument of the transfer executed by Seely to Stephens. "I further covenant and agree," said Stephens, however, "to do any other act or execute any further instruments which will more clearly convey the title or ownership intended herein to be conveyed, it being understood that I do not in any manner warrant the title of such property, but merely convey such right and ownership as I now have."